

AN OUTLINE OF COUNTY GOVERNMENT IN KANSAS

by

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F O R E W O R D

The purpose of this study is to present a comprehensive survey of county government in Kansas. To accomplish this purpose many problems of county government have been discussed briefly without being investigated thoroughly, many questions have been raised without any attempt at answering them. This course was chosen deliberately because it was believed that a comprehensive view of the entire field should be had before an attempt was made to investigate intensively any aspect of it. Many phases of county government are in need of special study. It is the writer's hope that this discussion will suggest some of those problems to the reader, and that it will serve as a useful preliminary to further investigation.

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PART I

THE COUNTY AREAS

CHAPTER I

THE PRESENT COUNTIES OF KANSAS

The Establishment of Kansas Counties

The establishment of the present counties of Kansas was begun soon after the organization of Kansas territory. Many of the present counties of the state have had a continuous existence since the first meeting of the territorial legislature in 1855. Kansas was organized as a territory under the terms of the Kansas-Nebraska Act of March 30, 1854. The territory included not only the area of the present state, but also that portion of the present state of Colorado lying between the western boundary of Kansas and the Rocky Mountains and between the thirty-eighth and thirty-ninth parallels. The first election of a territorial legislature was held in November, 1854 and the first legislature met in July and August, 1855.

There was no local government in Kansas before the organization of the territory, for the reason that the region was not opened to white settlement until that time. A few trading posts were scattered here and there along the Kansas river and elsewhere in the state, but there was no real settlement. A rush to settle began, however, after the opening of the territory, and the rush was embittered, if not increased, by the fact that the "organic act" of the

territory, the Kansas-Nebraska bill, repealed the Missouri Compromise of 1820 and threw the question of the status of slavery in the territory to the chances of popular sovereignty. A bloody battle for control of the state ensued between the free and slave forces, and one of the first struggles was to control the first territorial legislature.

The slave forces won this opening contest with the result that the laws of the slave state of Missouri were adopted almost in their entirety for the territory of Kansas.¹ The slave victory was short-lived, however, and in 1859 the free-state forces, which by that time had gained control of the legislature, repealed all the acts of the first session.² All laws of the second or 1857 session of the legislature were also repealed, with the exception of one act, an act defining, in terms of the federal survey, the boundaries of most of the counties already established in the state.³

The legislature of 1855, in its first law establishing counties, provided for 33 counties, all lying in the eastern third of the state.⁴ Two other acts of the same session established three other counties, but these laws were among those repealed in 1859. Since the federal survey had not reached Kansas in 1855, the legislature was compelled to define county boundaries in terms of miles instead of the more accurate surveyor's measure. Most of the first counties were laid out in squares twenty-five miles on a side or in oblongs twenty-five by thirty miles. Most of the counties in the Kansas river valley were bounded on one side by the river, but the remaining counties

were laid out arbitrarily in regular and almost uniform shape.

By 1857 the survey had proceeded far enough to allow for the definition of county boundaries in terms of township and sectional lines. All the counties established in the first act of 1855 were redefined in such terms in 1857 in "An Act more particularly to define the boundaries of the several counties in the Territory of Kansas". In 1859 seven new counties were established, and in 1860 eight more. By 1861, at the time of the admission of Kansas as a state, fifty-two counties had been established, mostly in the eastern third of the state, although the one county of Peketon (which was established but never organized) included all of the south-western quarter of the present state. That portion of the territory extending from the present western boundary of Kansas to the Rocky Mountains was divided into five counties.

During the first few sessions after the acquisition of statehood, the legislature established few new counties. One or two old ones disappeared, a number of changes in county names and boundaries were made, and two counties were temporarily disestablished, with the provision that they should be reestablished as soon as they had gained sufficient population. The first wholesale creation of counties under the state government came in 1867 when thirty-five counties comprising more than a third of the territory of the state were established.⁵ Six years later, in 1873, the remainder of the state to the western boundary was divided into twenty-two new

counties. During the next twenty years many changes of boundaries and names were made, a few new counties were established and many old ones disappeared. By 1886 the counties of the state, with one exception, had attained approximately their present boundaries. In 1892, the state instituted quo warranto proceedings against Garfield county seeking to disestablish it on the grounds that it lacked the constitutional minimum area of 432 square miles. The following year, Garfield was annexed to Finney county, and the county map of Kansas attained practically its present form.⁶ Changes in the past forty years have been of a minor character involving only boundary adjustments and corrections.

From the outset it was the practice to establish counties in advance of population growth. Of the thirty-three counties created by the first act of 1855 only seventeen were organized at the time. The remainder were too sparsely settled to maintain a county organization and were consequently attached to nearby counties for civil and military purposes to await population growth. As population moved westward across the state, this policy of establishing counties in advance of any serious local need for them continued, encouraged, no doubt, by land speculators whose activities played an important part in the development of Kansas just after the Civil War. Any map of Kansas of the early period of statehood is thickly dotted with projected towns which never flourished, many of which never existed except on the map, and is crossed with rail-

roads for which not a tie was laid. It naturally was to the advantage of town-site promoters to secure the county seat for their town. This demand on the part of land speculators materially influenced the legislature in the practice of establishing counties in advance of population.

Unlike many other states, Kansas did not first establish large counties in the sparsely settled regions of the state, to subdivide them later as growth in population warranted. Instead, counties, of what was deemed to be the proper area, were created in the hope that they would acquire a sufficient population to support a county organization. No doubt the optimism of successive land-booms contributed to such a point of view. To the present time, however, the growth in population of western Kansas has not justified that hope. The maintenance of complete county functions in many western counties remains a more difficult and expensive process than in the more populous counties of the eastern and central parts of the state.

Area, Population, and Population Density of Kansas Counties⁸

Kansas, with a land area of 81,774 square miles, is divided into 105 counties having an average area of 778 square miles. This is a comparatively large number of counties, and in fact, only four states in the United States have more counties than Kansas. Texas, with an area three times as large as that of Kansas, has 254 counties, a larger number than any other state. Georgia, on the other hand, with less than three-fourths the area of Kansas, has 161 counties

and is second among the states in number of counties. At the other extreme are Rhode Island and Delaware with five and three counties respectively. In the entire United States there were, in 1929, 3,072 counties, or an average of fewer than 44 counties for each state.⁸

Kansas counties range in area from 1,434 square miles in Butler county to 143 square miles in Wyandotte. This means that the largest county in the state is ten times as large as the smallest. This variation in county area may seem to be a large one, but in comparison with the variation in many other states it is not considerable. In Minnesota, for example, the largest county is more than 40 times as large in area as the smallest, and in Nevada more than 100 times. In the United States as a whole counties range in area from 20,175 square miles in San Bernardino County, California, to 22 square miles in New York County, New York.

Average area is probably more significant than the extreme variations. The average area of Kansas counties, as has been shown, is 778 square miles. This is almost 200 square miles smaller than the average area of all the counties in the United States which is 968 square miles. In 20 states the average area of counties is larger than in Kansas.

Wisconsin is the same as in Kansas, but in most of the states east of the Mississippi the counties are smaller in average area than are those of Kansas. Rhode Island counties average 213 square miles, and Kentucky counties 334. At the other extreme are many of the western states. Counties of Arizona average 8,129 square miles in area, and those of Wyoming 4,241. So extremely large, in fact, are many of the counties

of the western United States that the area of the median county, which is about 600 square miles,⁹ is more nearly representative of the typical American county than is the average area given above.

The largest county in Kansas, as has been stated, is about 1,300 square miles larger in area than the smallest. This variation is negligible as compared with the variation in California, for example, where the largest county is 20,000 square miles larger than the smallest; but what is more significant, the extreme variation in area of Kansas counties is not representative of most of the counties of the state. More than half the counties are within a range of area of only 300 square miles, from 600 to 900 square miles. Generally speaking, the counties in the western portion of Kansas are larger than those in the eastern part, but this variation is not considerable, and, in fact, both the largest and smallest counties are in the eastern half of the state. Approximately two-thirds of the counties in the western half of the state are larger than the average in area, and somewhat more than two-thirds of those in the eastern part of the state are smaller than the average, but the variations from the average are not very great. Fifteen counties have more than a thousand square miles of area, and seven have less than four hundred square miles.

Most of the counties of Kansas are laid out along the lines of congressional townships, especially in the western two-thirds of the state. A number of the eastern counties, as is shown above, were created before the federal survey was

completed, and when they were redefined in terms of the survey it was found impossible to make many of the boundaries of the counties correspond with the lines of the congressional townships. Even in the eastern third of the state, however, section lines, arbitrarily laid out by the survey, form most of the county boundaries. The Kansas and Republican rivers form the boundaries for a few counties, but throughout the rest of the state county boundaries appear to have been located without regard for topographical features. This may be due, to be sure, to the fact that in Kansas there are few natural features to serve as county lines. There are no lakes, mountains, or even considerable ranges of hills, and only a few rivers which afford real boundaries. However, it seems significant that the Arkansas river, which is the longest, if not the largest, river in the state, nowhere serves as a county boundary.

The population of Kansas counties varies much more widely than does county area. Wyandotte county (population 141,211) the most populous county in the state, is more than eighty times as large as Greeley (population 1,712), the least populous county. The variation in population, however, like the variation in area, is negligible in comparison with the variations in many other states. In the United States as a whole, counties range in population from 3,982,123 in Cook county, Illinois, to 80 in Armstrong county, South Dakota. Five counties in Kansas have fewer than 3,000 population, and, on the other hand, only four

have more than 50,000. Sedgewick (population 136,330) is the only county in the state besides Wyandotte with a population of more than one hundred thousand. In the entire United States ten counties, three of them in the city of New York, have more than one million inhabitants each.

The average population of Kansas counties is 17,419 and the population of the median or middle county in rank is 12,823. The average population of all the counties in the United States is 39,965, and of the median county about 20,000.¹⁰ Massachusetts counties have a larger average population (303,543) than do those of any other state. On the other hand the counties of Nevada average smaller in population (5,356) than do the counties of any other state.

There is a gradual decline in population from county to county as one goes from east to west across the state of Kansas. There are exceptions, to be sure, but, in general, the farther west one goes in the state, the less populous are the counties. Only two counties west of the center of the state are larger than the average in population, while forty-four are smaller. In the eastern half of the state almost two-thirds of the counties are larger than the average population. Thus population varies inversely to area across the state, with the result that the variation in population density in Kansas is even greater than is the variation of population or area. The county with the lowest population density is Greeley, with 2.2 persons per square mile. The greatest density is in Wyandotte county, which has

957.8 persons per square mile. Shawnee county, with 156.6 persons per square mile, is second to Wyandotte in density of population, and Sedgewick with 137.2 persons is third. No other county has more than one hundred persons per square mile, while at the other extreme are thirty-one counties with fewer than ten persons per square mile.¹¹ Population density in the entire United States varies from .2 persons per square mile in Armstrong county, South Dakota and Nye county, Nevada to 84,877.8 persons per square mile in New York county, New York.

Other Characteristics of Kansas Counties

Only one county in Kansas is distinctly urban, and that is Wyandotte, the smallest county in area, the largest in population, and first in population density. Six-sevenths of its population is in its principal city, Kansas City (population 121,857). Yet even Wyandotte has a comparatively large amount of rural territory. Only about one-seventh of the county's area is included in the city which has six-sevenths of its population. Three-fourths of the remaining population of the county is in the three suburban townships of Quindaro, Wyandotte, and Shawnee. Sedgewick and Shawnee, the next most populous counties, although they contain the second and third cities of the state, can, as counties, hardly be considered urban. In Shawnee county about three-fourths of the population is in Topeka (population 64,120), and in Sedgewick county about four-fifths of the population is in Wichita (population

111,110), but in each county the area of the principal city is a very small part of the whole, and in neither county is there any other urban place (accepting the census bureau's definition of urban as an incorporated place of more than 2,500 persons). In eight other counties, Atchison, Douglas, Finney, Geary, Reno, Riley, Saline, Seward, the largest city in the county comprises over half the county's population. In a few other counties the total urban population, in two or more cities, is greater than the total rural population. With the few exceptions noted, the counties of Kansas are distinctly rural, and for the most part agricultural. Fifty-five Kansas counties have no town of more than twenty-five hundred inhabitants, and seventy-seven have no city of more than 5,000 population.

Again with the exception of Wyandotte, there are no predominantly industrial counties in Kansas. Three counties in south-eastern Kansas comprise an important mining region, and several other counties in south and central Kansas have important oil-fields. The remaining counties in the state are predominately agricultural, with wheat-farming and the raising of live-stock as the principal agricultural interests. Much of western Kansas is sparsely populated, but there are no desert regions in the state, as the western Kansas wheat crops of recent years have amply demonstrated. There are no mountainous or forest regions, and so no wilderness counties, as in many states, even in the thickly populated east.

Another very useful standard in comparing the importance

of counties is that of relative property valuation, since the source of revenue is important in considering any tax-levying unit of government. According to figures issued by the state tax commission,¹³ the total taxable valuation of the state in 1928 was \$3,728,707,729. The average valuation of all counties was \$35,511,502, and the range of taxable valuations was from \$200,460,950 in Sedgewick county to \$4,259,298 in Stanton county. Here, as in population, there is a noticeable decline from east to west in the state. Only one county west of the center, Barton, with a valuation of \$50,513,532, had a larger valuation than the average for the state. On the other hand the ten counties having the largest valuations comprise approximately one-third of the total valuation of the state.¹⁴ They also include about a third of the total population, although only a ninth of the total area. The amount of valuation bears a fairly close relationship to the population, although a few exceptional counties such as Greenwood have a large valuation with an average population, and others, such as Leavenworth, have a comparatively large population with an average valuation.¹⁵

CHAPTER II

CHANGING THE COUNTY AREAS

Constitutional Limitations

The power to alter the present county areas is vested by the constitution in the state legislature. The legislature may create new counties, change the boundaries of old ones, or locate county seats, subject to two limitations only. These limitations are embodied in Art. IX, Sec. 1 of the Kansas constitution, which states:

"The legislature shall provide for organizing new counties, locating county seats, and changing county lines; but no county seat shall be changed without the consent of a majority of the electors of the county; nor any county organized, nor the lines of any county changed so as to include an area of less than four hundred and thirty-two square miles."¹

The Creation of New Counties Today

The most sweeping of these possible changes in the present county areas is the creation of new counties. Especially is this the case today, since any new county at the present time must necessarily be created from some existing county or counties, either by division or by consolidation. For more than half a century there has been no unorganized territory in the state, and it has been more than forty years since the last county was created by division. The last major boundary change was made nearly

thirty years ago, when Finney and Garfield counties were consolidated.

It seems extremely unlikely that any new counties will be created by the process of division. Kansas counties, as has been shown in the preceding chapter, are already more numerous than are those of most other states. They are also smaller both in area and in population than are typical American counties. More than that, they are comparatively uniform in size, and there are no large counties which might readily be subdivided. The creation of additional counties in Kansas seems neither likely nor desirable. In fact, any important change likely to be made in county areas would probably be in the opposite direction, toward reduction of the number of counties by consolidation.

County Consolidation

Some effort has, in fact, been made to bring about county consolidation in Kansas. Two measures looking to that end were introduced in the legislature in 1931, but both failed of passage. One, a proposal of Sen. Pfouts of Atchison, provided for the appointment of a commission to reduce the number of counties in the state, by consolidation, to fifty. The other was introduced in the House of Representatives by Mr. Tanquary of Fort Scott. It provided outright for the reduction of the number of counties in the state to forty-five, by consolidation of most of the existing counties. Under this proposal the most populous of the present counties would give its name and

county seat to the new, consolidated county of which it became a part. This measure was referred to the House Committee on County Lines and County Seats and was never reported by the committee.

Proponents of consolidation commonly claim that our present county areas are too small, that they are relics of horse and buggy days, and in this motor age might well be greatly enlarged. This argument appears to gain support from the figures on the comparative size of counties given in the preceding chapter, for they show not only that Kansas counties are relatively small both in area and in population, but also that there is certainly no standard size for counties in the United States. That counties need not be small is amply shown by the fact that there are in the United States a number of counties that are fully ten times as large as the largest Kansas county. Approximately two hundred square miles could be added to the average Kansas county and the resultant county would still not be larger than the average for the United States.

The principal argument in favor of consolidation, however, is that it makes for economy in county government. Fifty county governments can be supported, it is said, more cheaply than can one hundred and five. Not only would there be a reduction in the operating costs of county government through this reduction in the number of county units, but there would also, it is said, be a gain in the efficiency of the county governments through the increase in the number of people and the area they were required to serve.

The entire question of consolidation of counties is in need of thorough study. It is not the purpose of this discussion to enter very deeply into this question, but a few figures on the comparative cost of county government in Kansas, prepared in connection with another part of this study, appear to have a bearing upon the question of consolidation. It has been found that while county tax levies are roughly proportioned to population, they tend to be relatively higher in small counties than in large ones. This means that in counties low in population the per capita tax levy for county purposes is higher than in large counties. In Kansas this variation is considerable. In 1927, for example, the per capita tax for county purposes varied from \$25.31 in Grant county (population, 1927, 1,824) to \$5.82 in Wyandotte county (population, 1927, 133,420). These figures are the more significant for the reason that they are typical. The 1927 figures show a very definite increase in per capita county tax from the most populous county to the least populous. The following table illustrates this variation:

Average Per Capita County Tax Levy in Different Classes
of Counties

Counties grouped by population classes.	Per Capita tax levied for county purposes.
More than 100,000 population	\$ 6.36
50,000 to 100,000	7.26
40,000 to 50,000	8.14
30,000 to 40,000	10.40
20,000 to 30,000	10.18
15,000 to 20,000	10.89
10,000 to 15,000	12.63
5,000 to 10,000	12.40
Less than 5,000	15.77

These figures are based upon only two sources of county revenue, the general property tax and the tax on moneys and credits, but, as is shown in a later chapter, these two sources furnish more than four-fifths of the total county revenue. Clearly, then, the figures given above show that the per capita cost of county government usually is inversely proportioned to county population, a fact which lends support to the proponents of consolidation, in their claim that large counties can be more economically administered than can small ones.²

The principal objections to consolidation are practical ones. In the first place, any move to abolish the present counties or to reorganize them comprehensively would inevitably meet with a considerable degree of popular oppo-

sition. Certain types of county office-holders, tradesmen in towns which might cease to be county seats, and other persons who would be adversely affected by consolidation would constitute an important minority opposed to the movement. In the second place, the importance of popular opposition is intensified by certain constitutional difficulties which stand in the way of consolidation. The constitution gives the legislature a free hand in creating new counties or in altering county boundaries, as long as no county is reduced to an area of less than 432 square miles. This would seem to give the legislature authority to create new counties by consolidation of old ones, if it were not for the restriction that no county seat may be changed without the consent of the electors concerned. Consolidation would of course mean the abolition of one or more old county seats. If this action were construed by the courts to be "changing county seats", as it seems reasonable that it would be, then no consolidation could be made without the consent of a majority of the electorate in each of the counties concerned in the consolidation.³ The effectiveness of popular opposition is clearly greatly increased by this provision.

In fact, the present constitutional limitations, if construed as affecting consolidation, would probably absolutely prevent any attempted consolidation of counties. The provision requiring a majority vote of the electorate in each county to change the county seat would appear to give a bare majority of the voters in any one county of a

proposed consolidation the power to defeat the movement. This might mean that a minority of all the persons concerned could defeat a consolidation.

Thus it appears that while the legislature can create new counties by division without consulting the inhabitants of the territory affected, it is indirectly prohibited from creating new counties by consolidation without popular consent. This difficulty might, of course, be eliminated by the passage of a constitutional amendment directly authorizing county consolidation, but the passage of the amendment would also require popular approval.

Altering County Boundaries

Alteration in county boundaries less sweeping than the creation of entire new counties is sometimes necessary. Making such changes is a function of the legislature, but a statutory method has been devised by which minor boundary changes may be effected by the counties concerned.⁴ Since all the territory of the state is included within county boundaries, any change in county lines now would involve a transfer of territory from one county to another. The statutes provide that citizens of the counties involved in proposed change of boundary may initiate the movement by petitioning their respective county boards. Petitions must bear the names of a majority of the legal voters in each of the counties affected, and must be presented in all the counties affected at the same time. Proof must be furnished by affidavit that at least three notices, containing copies

of the petition and setting the date of the hearing on the petition, have been posted in public places in each of the townships in the counties affected. When these requirements have been complied with, the respective boards of county commissioners must order a vote on the proposed boundary change at the next general election, unless remonstrances, bearing a number of signers equal to the number who signed the petition, are presented, or unless the proposed changes would violate the first section of article nine of the Kansas constitution. (i.e. reduce a county to an area of less than 432 square miles)

If a vote on a boundary change is ordered, the county clerks in the various counties affected must give at least four weeks' notice of the election by posters or newspaper announcements bearing a description of the proposed changes. The vote must be taken at the next general election, and a majority of all votes cast in each of the counties affected is necessary to secure the change. If a majority of the voters in the county from which the proposed change would remove territory is favorable to the change, the county clerk of that county shall notify the county clerks of the other counties concerned, and if all other counties are favorable, a record of the change must be made in all the counties interested.

After such a change of boundaries has been made, the records pertaining to any territory transferred shall be taken from the county to which the territory belonged and given to the county to which the territory is attached, such

change to go into effect on the first of January following the election. Township officers of the territory detached become township officers in the county to which the territory is transferred, unless the territory transferred does not constitute a civil township, in which case it must be attached to adjoining townships in the new county. Transfer does not release the territory transferred from its share of debts of the old county contracted before the change, and when unpaid, back county and state taxes are collected in the detached territory, they shall be paid to the treasurer of the county to which the territory formerly belonged. Taxes which were levied for purposes of agencies within the transferred territory shall be paid to the treasurer of the new county.

Changing County Seats

It may today seem strange that the principal constitutional limitation upon the power of the legislature to make changes in the county areas concerns transferring county seats. The legislature is given practically a free hand in creating new counties, but it must secure popular consent to change a county seat. County seat changes are so infrequent today and it is so much a part of local tradition that certain towns should be county seats, that the importance which the constitution attaches to county seat changes may seem unwarranted. This restriction however is a relic of the time when county seats were first being located and when the rivalry among communities to secure the county seat was very keen. These rivalries some-

times reached the proportions of actual conflict, and the history of western Kansas includes many stories of "county seat wars".

The early town planners fought for two things especially, the railroad and the county seat. The more fortunate communities secured both, but in some cases a compromise was effected whereby one rival town secured the railroad and the other the county seat. Often towns flourished for a time, only to lose the fight for county seat, and, as a result, languished and finally disappeared. Only recently a metropolitan newspaper nearby told briefly of the demolition of the last building of the "ghost" town of Saratoga, one of the losers in a three-cornered fight for county seat of Pratt county.⁵ Saratoga, once a city of more than three thousand inhabitants, now has not even a building left to mark its site. Iuka, the other loser in the contest, for a time actually county seat of the county, is now a village of fewer than two hundred people. Pratt, the victorious community, has flourished, and now has a population of more than six thousand. It would be unwise, of course, to suggest that the possession of the county seat has been the only factor in Pratt's growth, but it has undoubtedly been an important one.

The strong feeling over the locating of county seats, and the possibility of a bitter controversy over any change led to the inclusion in the constitution of the provision requiring popular approval of county seat changes.⁶ During

the territorial period the legislature was permitted to designate county seats, and sometimes did, especially when establishing new counties. In other cases it appointed commissions in the counties to locate the county seats subject to popular vote. Since the acquiring of statehood, however, changes in county seats have always required popular approval.

The constitutional limitations upon the changing of county seats have been supplemented by statutes which provide processes whereby the inhabitants of a county can initiate the movement for relocation.⁷ The first step in the process is the presentation to the county board of commissioners of a petition bearing the signatures of at least a majority of the legal electors of the county. In a county in which a county seat has previously been located by popular vote or in which the county has acquired buildings costing at least \$2,000 the petition for change must bear the names of at least three-fifths of the legal electors of the county. In either of these cases a majority vote on the proposition is sufficient to carry it. In counties in which there are more than two thousand inhabitants and in which county buildings costing more than \$10,000 have been acquired, or where the county seat has remained in the same place for eight years after having been located by popular vote, petition for change of county seat must bear the names of two-thirds of the legal electors of the county, and the proposal must receive the support of three-fifths of those voting in the election.

The petition for change of a county seat which has previously been located by popular vote must propose change to a definite locality and the proposition when put to the people must be for change to a designated place. No election for change of county seat may be held within five years of a previous election upon the same subject, except in counties of fewer than 2,000 inhabitants, where the time limit is two years.⁸

Vote on the question of relocating county seats must be taken within fifty days of the presentation of the petition and it is expressly prohibited to hold such a special election on the day of a general election. The county board is required to give thirty days notice of the election by means of newspapers or posters. The vote must be canvassed by the county board on the first Saturday after the election and the place receiving a majority of the votes shall be proclaimed county seat. In cases where the county seat has not been previously located by popular vote, if there is no majority for any place in the first election, a second election must be held on the Tuesday following the first, with the vote limited to the two places standing highest in the first election. If a second election is held, it must be canvassed as was the first, on the Saturday following the election.

A special voting list or register must be prepared for a county seat election by the regular election judges of each precinct. This may be based upon the regular voting list of the precinct, but the judges are required to meet

three weeks before the special election for the purpose of preparing their register. The original of the list then prepared is filed with the clerk of the township, a copy is posted at the precinct polling place and a copy is kept by each judge. Again on Tuesday of the week before the election, the election board meets to hear protests against the first list and to revise it. The board is authorized to administer oaths to voters and challengers as in any other election. The revised list of voters as prepared at the second meeting of the judges, is the official registry of the election, and no one whose name does not appear on the list will be allowed to vote unless he can furnish an affidavit that he is a legal voter and can produce the affidavit of another legal elector of the precinct in support of his claim. Anyone, whether his name is on the register or not, is subject to the customary challenge at the polls.

Once a proposal to relocate the county seat has been carried and the new county seat has been proclaimed by the county board, all county officers who are required by law to maintain their offices at the county seat must move the records and equipment of their offices to the new seat of government within twenty days. The failure to comply with this requirement makes the officer or his surety liable to a fine of five dollars for each day's delay.⁹ More than that, any citizen of the county is authorized to sue for a writ of mandamus to compel any officer to remove his office to the new seat of government. On the other hand, he may sue for a permanent injunction to prevent the officer from removing to

the new county seat if he believes that the election has been fraudulently or illegally conducted. In a suit for either writ, the validity of the election must be tested, and all votes cast or offered for casting may be tested and counted. Appeal from decisions in such cases must be taken within sixty days from the rendition of the decision. The plaintiff in the suit for injunction or the relator in an action of mandamus must give surety for the costs of the action.¹⁰

Although the changing of county seats is much less important now than in the period following the establishment of counties, even today the question of the possession of a county seat is an important one in any community. Discussion of a county consolidation proposal in a community which would lose its county seat by that action will amply support that statement. Farmers who habitually go to the county seat to pay taxes, attend court, and transact other business in the county offices, are quite likely to do their trading, as well, in the county seat town; and the "farm trade" is the life-blood of most Kansas cities.

PART II

THE COUNTY ORGANIZATION

CHAPTER III

COUNTY ORGANIZATION IN THE TERRITORIAL PERIOD

A Survey of the Territorial Period

The history of county government in Kansas falls naturally into two divisions, the territorial period, and the period of statehood. These two divisions represent not only important differences in the status of the entire territory, but also distinct differences in the nature of county development. The first or territorial period, lasting from 1855 to 1861, was marked by frequent sweeping reorganizations in the system of county government. The territorial legislature held six sessions. At four of these six sessions a complete county code was provided, and all previous legislation affecting the structure of county government was repealed. Three different plans of county government were established during that time. The period of statehood, from 1861 to the present time, by contrast, has been a period of stability in county organization. The plan of county government established by the last territorial legislature in 1860 has continued substantially unchanged to the present time. Such changes as have been made have not altered the fundamental structure established in 1860. The period of statehood in county government may be characterized as a period of development or evolution, while the

territorial period was one of experimentation and revision.

The reason for the numerous changes in county government in Kansas during the territorial period may be found in a study of the political battles that were waged for control of the state of Kansas. In the case of the first two plans adopted, at least, it is difficult to believe that the merits of the plans used had much to do with their selection. Kansas Territory was organized under the Kansas-Nebraska Act of 1854, which act left the burning question of slavery to be settled by the voters in the territory itself. The incorporation of this doctrine of "squatter sovereignty" in the enabling act of Kansas precipitated a rush for settlement of the territory and a struggle between the free and slave forces for control of the territorial government. The proximity of the slave state of Missouri to the new territory gave the pro-slavery forces an early advantage in the struggle, and they were successful in gaining control of the first territorial legislature. That fact determined the form of the first county government in Kansas. The first legislature, composed, as it was, largely of men from the state of Missouri, desiring hurriedly to create a pro-slavery government for the territory of Kansas, adopted outright the laws of the state of Missouri with such minor changes as would make them applicable to the territory. Thus the first form of county government in Kansas was the southern type, borrowed outright from Missouri.

At the second session of the territorial legislature, held in 1857, the pro-slavery interests were still in con-

trol, and the Missouri plan of county government was continued. In the election of 1857, however, the free-state forces were successful, and were in control of the fourth session of the legislature which met in 1858. Among the many important changes effected by that legislature was the reorganization of county government into the second general plan in Kansas county history. The following year, in the fifth session of the territorial legislature, all previous legislation relating to counties, except an act of 1857 defining county boundaries, was repealed.¹ A complete county law was enacted at this same session, but it followed almost identically the terms of the act of 1858, and did not create a new system of county government.

The third sweeping change in county organization came in 1860 in the last session of the territorial legislature. Previous county legislation was repealed and a complete county code adopted. Substantially this same plan was reenacted in the Laws of 1862 and again in the General Statutes of 1868. Since 1868 there have been elaborations and modifications of the system of county government, new offices and functions have been added to the plan, but to a large extent the present county law is based upon the General Statutes of 1868, and through it, upon the Laws of 1860.

The Act of 1855: The Missouri Plan

The plan of county government adopted in 1855, we have said, was borrowed outright from the state of Missouri.

It was the so-called southern plan of county organization, characterized by the centering of responsibility in the county or probate court. The governing body of the county was the board of commissioners composed of two commissioners elected at large, with the probate judge as ex officio chairman of the county board.² The judicial character of this body is revealed by the fact that throughout the statutes the governing body is repeatedly referred to as the "tribunal transacting county business". In addition to his duties as chairman of the board, the probate judge exercised functions similar to those of the present-day probate court with regard to the affairs of minors, insane persons, the deceased, etc., the regular probate functions.³ More than that, the probate court was given a limited general jurisdiction in both civil and criminal matters,⁴ and was authorized to incorporate towns.⁵ Under this plan the county clerk, or "clerk of the county board" was ex officio clerk of the probate court,⁶ and by virtue of that office, was county recorder,⁷ an officer now called register of deeds. This concentration of responsibility clearly made the judge of the probate court the most important single officer in the county government.

Second in importance among the county officers under the law of 1855 was the sheriff, whose functions, like those of the probate judge, were more extensive than they are today. The sheriff's work was three-fold. He was the county police officer, the "conservator of the

peace".⁸ He was the executive officer of the district and probate courts.⁹ Both of these functions the sheriff exercises today, but in addition, under the law of 1855 the sheriff was ex officio collector of the taxes.¹⁰ He was required to make a quarterly settlement with the county board of all fees and fines collected by him, and an annual settlement with the county board and the auditor of the territory of all taxes, county and territorial, that he had collected. A county treasurer was elected in each county for a term of two years, but he was only a custodian of county funds and not tax collector as he is today.¹¹

Another distinctive characteristic of county government in 1855 is the fact that only half of the major county officers, all of whose present-day counterparts are chosen by popular vote, were then elected. The two members of the county board, the probate judge, and the sheriff were each selected by the voters of the county for four-year terms. The treasurer was elected biennially. Five appointive county officers were provided: the county clerk, who when he served as clerk of the probate court was also county recorder, appointed by the county board for no stated term;¹² the county assessor, appointed annually by the county board;¹³ the coroner¹⁴ and the surveyor,¹⁵ each of whom was appointed by the county board for a four-year term. In 1857 the board was authorized to appoint a treasurer of the county school fund in each county. No county attorney was provided, but

the functions of representing the county and state in civil and criminal actions and of giving legal advice to public officials were vested in a district attorney in each judicial district. These district attorneys were elected by the territorial legislature for four-year terms.¹⁶

Although the system of county government established in 1855 was never given a fair trial, it has been characterized by one student as "undemocratic and inefficient," and as "well suited to a community resting upon the institution of slavery" such as it was the hope of a pro-slavery legislature to establish in Kansas.¹⁷ As it was actually administered, county government was undemocratic in that the people were given at the outset no voice in the selection of their county officers. Five elective county officers were provided for each county, as has been stated, but in every case some means other than popular election was used for the choosing of the first incumbents of these supposedly elective offices. The first sheriffs, probate judges, and members of the county board were chosen by the territorial legislature to hold office until the general election of 1857, and the first county treasurers were chosen by the county boards of commissioners.¹⁸ Thus, directly or indirectly, the choice of all county officers was in the hands of the legislature, and for two years the slave power, which had fraudulently gained control of the territorial government, was insured control of county government as well.

The Acts of 1858 and 1859: The Supervisor System

The general election of October 1857 brought the free-state forces of the territory into power, and that change was immediately reflected in a changed system of county government. The legislature in 1858 showed northern influence not only in its attitude toward slavery, but also in the system of county government it established. For the distinctly southern type of small county board centered about the probate court was substituted a larger board of supervisors composed of township trustees. Three trustees were to be elected in each township at the annual meeting held in March. One of these was to be designated on the ballot as chairman, and one of his functions was to serve as ex officio member of the county board of supervisors.¹⁹ Where a county contained only one political township, the township board of trustees was ex officio county board of supervisors.²⁰

Accompanying this change in the form of county board came a reduction in the powers of the probate judge. A chairman elected annually from among the board of supervisors replaced the probate judge as presiding officer of the county board. The court retained its limited civil and criminal jurisdiction, its strictly probate functions, and its power to incorporate towns, and gained the right to hear appeals from the decisions of the county board of supervisors on claims against the county.²¹ A separate

register of deeds was provided,²² and the office of county recorder, which had been filled ex officio by the clerk of the probate court, was abolished. Thus the first steps in the diminution of the importance of the probate judge were taken.

A shift in emphasis from the county as the unit of local government to the township was brought about by the Act of 1858 in the change from the board of commissioners to the county board of supervisors. This shift is further manifested in the system of property assessment and tax collection that was established by the Act of 1858. Assessment under the law of 1855 had been a county function, administered by the county assessor who was appointed by the county board. The board had a further control in the right of sitting as a board of tax appeal to hear appeals from the decisions of the assessor.²³ Assessment under the law of 1858 was made a township function in the hands of the ward and township assessors.²⁴ No provision was made for the hearing of appeals by the county board of supervisors, but the board was required to examine the aggregate assessment of the various townships with a view to equalizing the assessment among the towns.²⁵ This same year a territorial board of equalization, composed of the Secretary of State, the Auditor, and the Treasurer of the Territory,²⁶ was created to equalize the tax burden among the counties.

Tax collection, like assessment, had been a county function under the law of 1855 and had been a duty of the

sheriff. Under the act of 1858 the sheriff was deprived of this duty, and it was given to the township treasurers. An exception was made in the case of delinquent taxes levied against real property. The sale of such property for taxes was made a function of the county treasurer.²⁷

In addition to the board of supervisors, the following county officers were provided by the Law of 1858; clerk, treasurer, probate judge, register of deeds, coroner, surveyor, sheriff, attorney,²⁸ auditor²⁹ and superintendent of schools.³⁰ All of these officers except the county clerk were elective, and the terms of all except the probate judge and the county superintendent were two years. The county superintendent was to be elected annually, and the probate judge for a four-year term. There was a curious contradiction in the laws regarding the county clerk. The act establishing the office of county clerk provided that he should be elected for a term of two years and that he should serve as ex officio clerk of the probate court.³¹ The law establishing the office of auditor provided that the auditor should be ex officio county clerk, and that no person should be both auditor and clerk of the probate court.³² Under either provision the clerk was elected for a two-year term, but it is difficult to see how he could both hold, and avoid holding, the office of clerk of the probate court. The elective county attorney, of course, replaced the district attorney chosen by the legislature and his term was shortened. More "democracy" of the Jacksonian variety was provided by

this doubling of the number of elective county offices.

The third sweeping repeal of county legislation came in 1859. A single act of the legislature repealed all laws of the session of 1855, all laws of the session of 1857 except an act defining, in terms of the federal survey, the boundaries of some thirty-five counties, and much of the legislation passed in 1858, including all county legislation.³³ To replace the system of county government thus swept away, a complete county code was enacted, but one which repeated in most particulars the provisions of the act of 1858.³⁴ The supervisor system was continued as was the township system of financial administration.³⁵ The principal changes were in the two offices of probate judge and county clerk. The reduction in the importance of the office of probate judge, begun in 1858, was continued. All civil and criminal jurisdiction except such cases as involved guardianships, administrations, etc. was transferred to the district court.³⁶ The district court was also given the authority to hear appeals from decisions of the county board on claims presented to the board for payment.³⁷ The power of the probate judge was enhanced, however, by the addition of the right to act as chairman of the court to judge election contests. Such courts were to be composed of three members, one chosen by each party to the contest, and the third the probate judge, ex officio.³⁸ The probate court retained its power to incorporate towns.

The county clerk remained ex officio clerk of the

county board and clerk of the probate court, and became ex officio clerk of the district court. At the same time the office of county auditor, whose functions had been exercised by the clerk, was abolished.

These were the principal ways in which the law of 1859 changed the system of county government established in 1858. The changes were not fundamental and not sufficiently extensive to create a new plan of county government.

The Law of 1860: The Small County Board

The supervisor system established in 1858 lasted just two years. In 1860 it was abolished in the last sweeping revision the Kansas system of county government has undergone. From the township as the unit of county organization, there was a return to the county, but not to the plan of 1855. In place of the large county board composed of the chairman of each township board of trustees, there was established a board of three commissioners elected from special commissioner districts in the county. The terms of the commissioners were three years,³⁹ with one commissioner elected each year.

Financial administration was again centered in the county. The office of county assessor was revived, and it was filled by annual elections.⁴⁰ The county treasurer was for the first time made tax-collector as well as custodian of the county funds.⁴¹ This early establishment of the county, rather than the township, as the unit of financial

administration, especially of assessment, was undoubtedly fortunate, even though, as we shall see, certain essentials of the county assessment plan were later abandoned for more than thirty years. The general property tax, as a principal source of revenue, is subject to criticism, but the problems its administration involves have been found to be much greater in states where township assessing units are used than in states where the county is the unit. In discussing this subject, a well-known text on county government says, "If the general property tax is to be retained, the county should replace the township or district as the unit of administration. The methods of assessment used in Ohio and Kansas furnish what appear to be suitable arrangements for the assessment of property."⁴² In tax collection the use of the county unit is probably less important than in assessment, but in that function also there is a gain in efficiency and convenience, and a wholly desirable concentration of responsibility.

The law of 1860 revived the office of county auditor and made it an ex officio position of the county clerk.⁴³ The clerk was also made ex officio clerk of the board of supervisors, but his functions as clerk of the probate court and clerk of the district court were taken from him. The probate court retained the authority to incorporate towns and villages, and an act was passed seeking to grant a limited civil jurisdiction to the court. The grant was

conditioned upon the passage of an act of Congress giving civil jurisdiction to probate courts in the territory or a decision of the territorial supreme court authorizing the exercise of such power.⁴⁴ The following year this act was repealed, and the jurisdiction of the probate court was limited to probate functions.⁴⁵

In other states, to be sure, changes in county government similar to those which were experienced in Kansas have occurred. In Minnesota, for example, there was a striking parallel to the experience of Kansas with the supervisor system. Under the territorial government, the county system of Minnesota was that of the old Wisconsin Territory, using a small three-member county board. The first state constitution in 1858 abolished this system, and just as Kansas did the same year, established the Large county board or supervisor system. This plan in Minnesota, just as in Kansas, lasted only two years, and in 1860 the constitution was amended to restore the small county board with three commissioners elected from districts. The large boards there had proved unwieldy.⁴⁶

Thus far in this discussion much has been said about the form of county government and very little about function. The reason for this is that in the few years that Kansas remained an organized territory the form of county government made all of its most important changes, while county functions and the duties of the various

officers changed very little. Very important changes were made in the composition of the county board in the years from 1855 to 1861, but the powers of the board were scarcely altered. The county clerk, save where he gained or lost ex officio functions, found his duties altered very little from year to year. Of course, such important activities as assessment and tax collection were changed from one official to another, but where such important changes in function occurred they were noted. Later in this paper a more detailed statement will be presented of the growing county functions, and of the duties of the various officers as they developed and as they now exist.

County Government in the Wyandotte Convention

The present Kansas constitution was drafted at Wyandotte in July 1859. Just a few months after this meeting, in January 1860, the territorial legislature, as has been shown, made the last sweeping revision of county government, laying the foundation for the present plan of county organization in Kansas. It might be expected then, that the proceedings of the Wyandotte convention would throw some light upon the sources of the present county system or upon the movement for its adoption. Such, however, is not the case. The discussion of county organization plays a comparatively unimportant part in the proceedings of the convention. In fact, only one question, the changing of county boundaries and county seats, received much attention

from the main body of the convention. However, the constitutional provisions adopted are themselves important, even though they were passed, for the most part, without debate.

One of the committees of the convention, appointed early in the proceedings, was that on county and township organization. The county provisions of the constitution are largely the work of that committee. The personnel of the committee is perhaps significant. It was composed of seven members, all of whom were northern men and three of whom were from the state of Ohio.⁴⁷ Two others had been born abroad (in Scotland⁴⁸ and Germany⁴⁹) and the remaining two were from Pennsylvania⁵⁰ and New Hampshire.⁵¹ In background these men were probably representative of the entire convention, for more of its members were from Ohio than from any other state, and only one member of the convention was from as far south as Virginia.

On July 15, 1859, the committee on county and township organization made its report, proposing an article containing six sections.⁵² In committee of the whole one section of the article was stricken out without debate on the ground that it dealt with the subject of the election of county officers, a matter which more properly belonged under the article on elections. Minor revisions were made in two other sections, and only the first section of the article was made the subject of debate. As reported by the committee, the first section stated:

"The Legislature may provide by law for submitting to the people of each county at an annual election,

the question of the location of county seats, and the General Assembly shall not change the lines of counties without the consent of the people of the several counties to be affected by the proposed alterations." 53

Four proposals for amending this section were made: (1) by limiting the vote on boundary changes to the territory to be affected by the change of boundary; (2) by including county seats under the limitation of requiring a vote of the counties collectively rather than severally; and (4) by leaving the matter of changing boundaries, changing county seats, and organizing new counties to the legislature. 54

The question of locating and changing county seats was clearly the most important consideration in the debate. A substitute for the proposal of the committee finally prevailed. It stated:

"Sec. 1. The Legislature may provide by law for the organization of new counties, locating county seats, and the changing of county lines." 55

In this form the section, with the rest of the article, was sent to the committee on phraseology and arrangement.

Later in the same day the convention moved to recall the county article from committee, and debate on the first article was resumed the following day. In this second debate on county organization three changes of the first section as it had been referred to the committee were proposed, two of them successfully. The consent of a majority of the electors of the county was required for the changing of county seats, 56 and it was provided that the legislature be prohibited from creating a county with less than 432

square miles or from reducing any to a smaller area than
⁵⁷ that. A strong effort to require a vote of the county
 approving boundary changes again failed.⁵⁸ The distinct-
 ion between the local interest involved a county-seat dis-
 pute and the importance to the state of being able to alter
 boundaries was clearly brought out in the debate, and the
 decision of these points turned upon the principle that the
 legislature should be restricted as little as possible. With
 the changes here noted, the report of the committee on county
 and township organization was returned to the committee on
 phraseology and arrangement.⁵⁹

One other effort was made to change the terms of the
 county article adopted. When the article came up for final
 passage, a motion was made to strike out the restriction
 as to the size of counties which the legislature might
 create, but the motion failed without debate.⁶⁰ Again,
 during the vote on verification of the completed consti-
 tution, an effort was made to restrict the legislature in
 changing county boundaries, but it failed with practically
 no debate.⁶¹ The county article, which became Article IX
 of the constitution, is as follows:⁶²

"Section 1. The Legislature shall provide for
 organizing new counties, locating county seats,
 and changing county lines; but no county seat
 shall be changed without the consent of a majority
 of the electors of the county; nor any county
 organized, nor the lines of any county changed
 so as to include an area of less than four hundred
 and thirty-two square miles.

Section 2. The Legislature shall provide for such county and township officers as may be necessary.

Section 3. All county officers shall hold their offices for the term of two years, and until their successors shall be qualified; but no person shall hold the office of sheriff or county treasurer for more than two consecutive terms.

Section 4. Township officers, except justices of the peace, shall hold their offices one year from the Monday next succeeding their election, and until their successors are qualified.

Section 5. All county and township officers may be removed from office, in such manner and for such cause, as shall be prescribed by law."

Not all the provisions of the Kansas Constitution directly relating to counties are included in the above article on county and township organization. Section 21 of Article II (Legislative) provides,

"The Legislature may confer upon tribunals transacting the county business of the several counties, such powers of local legislation and administration as it shall deem expedient." 63

This section was adopted after very slight debate. An effort was made to strike out the section on the ground that it was mere surplussage and conferred upon the legislature a power it already possessed. This position was urged in debate, but the opinion of the convention was that an express grant of authority was necessary. 64

The judiciary article, Article III of the Kansas constitution, also includes provisions related to county government. The establishment and jurisdiction of the probate courts is provided in sections 8 to 11 of the article. The district courts, which are really state courts, are also

provided for in this article, as is the clerk of the district court, a county officer. Provision is made for the composition and jurisdiction of the justice courts. From the point of view of the student of county government, the debates on these sections brought out two interesting questions. A motion was made to strike out the section establishing probate courts. It was urged that the probate courts would be a needless expense, that in most counties the work of the court could be performed by the district courts, and that in those counties sufficiently populous to need a probate court one might be established by the legislature. To that end a motion was made that the legislature be allowed to establish the courts at its discretion.⁶⁵ This seems to show how low in importance the probate court had fallen from its position under the county law of 1855 when most of the county functions were centered in the office of the probate judge. The motion to strike out this section relating to probate courts was withdrawn shortly after its introduction, when it was pointed out that since the pay of the judge and of the costs of the court were to be met by fees, the court would not be a financial burden upon the county. No one urged the necessity of probate courts, although the withdrawal of the motion may have prevented that.⁶⁶

The debate on the justice courts brought out another point of interest. An effort was made to impose a constitutional limitation upon the cases coming under the jurisdiction of the justice courts. A limit of \$50 was

proposed on the ground that the legislature might be filled with justices of the peace who would try to increase the jurisdiction of the courts to their own advantage. This rather unfavorable opinion of the integrity of the justices was based in part upon the fact that the justice courts had been used by the pro-slavery element in the territory as weapons against the free-state man. In opposition to the proposed restriction, however, it was urged that the limitation of the courts to cases involving such a small amount as \$50 would make the office worthless and would continue to attract worthless men to the office. This latter advice prevailed, and no restriction upon the jurisdiction of the justice courts was imposed by the convention.⁶⁷

Attention has been called to the fact that the Wyandotte convention was the work of northern men. It is only natural, then, that the constitutions of northern states should serve as sources for most of the provisions of the Kansas document. At the opening of proceedings it was voted to use the Ohio constitution as the basis for the work of the convention, and copies of the Ohio constitution were printed and put in the hands of the members. The Ohio influence is particularly evident in the article relating to county and township organization. Two sections of the article, section two, providing for county and township officers, and section six, providing a method of removing officers, are modeled directly after the Ohio constitution.

Sections three and four, dealing with the terms of officers, were original. Section one, the most debated section in the article, in its final form, was composed of provisions from the Illinois and Iowa constitutions.⁶⁸

The other county provisions not found in the county article are likewise of distinctly northern origin. "Section 21, of Article II conferring upon local tribunals the right to transact the county business, is, word for word, section seventeen, article three, of the New York constitution. It has another precedent in section twenty-two, article four, of the Wisconsin constitution."⁶⁹ The provisions relating to the district courts appear to have been based upon the territorial act, while section eight of article three, establishing the probate courts, is a combination of sections seven and eight of article four of the Ohio constitution. The provision relating to justices of the peace also come from Ohio.⁷⁰

The chief interest in the Wyandotte Convention lies in the answers to certain questions. What plan of county government had the convention in mind when the county provisions of the constitution were drafted? Was it intended that the supervisor system, established in the act of 1858 and reestablished in the session of the legislature which met only a few months before the convention, should be continued under the new constitution? Or did the convention foresee the system that was created in 1860? The restriction imposed upon county treasurers prohibiting them from holding more than two consecutive terms might be taken

to indicate that the plan of 1860 was in mind, for the treasurer was undoubtedly a much more important officer after the passage of the Act of 1860 than he was under the plan of 1858-9. On the other hand, the constitutional provisions regarding the terms of county and township officers fit the plan of 1858-9 exactly and do not fit the law of 1860 under which commissioners were given three year terms. (Changed in 1861 to two years to conform with the constitutional requirements.)⁷¹ The presumption would be, of course, in favor of the plan in existence at the time the constitution was drafted, and without strong evidence to the contrary, it would appear that the plan of county government established in 1858 was the basis for the work of the convention. If that is the case it is interesting that a completely new plan of county government was created after the constitution was drafted but before it went into effect, and that it was possible for this new plan to become the plan of county government for the state, under a constitution drafted for the old plan. That certainly illustrates the fact that the Kansas constitution leaves a large measure of discretion to the legislature, at least in regard to county government.

CHAPTER IV

PRINCIPAL DEVELOPMENTS IN COUNTY ORGANIZATION SINCE 1861

A Survey of the Period of Statehood

Since the admission of Kansas into the union in 1861 there has been no sweeping revision of county government, no complete repeal of all laws affecting county government, such as occurred so frequently during the territorial period. Changes in the structure of county government have been made, some of them changes of considerable importance, but at no time has the plan of government adopted in 1860 been entirely abandoned. In 1862 the first compiled statutes of the state of Kansas were issued.¹ In that compilation the county legislation repeats without material change the territorial act of 1860. In 1868 the second compilation of Kansas statutes, based, as far as county government is concerned, on the compilation of 1862, was issued.² It is on the General Statutes of 1868 that all of the subsequent general statutes have been based. In the present Revised Statutes (1923), laws enacted before 1868 are traced only to their reenactment in the General Statutes of 1868, and the session laws previous to that year are not commonly mentioned in citing the passage of laws. The result of this is that much of the present county legislation as found in the Revised Statutes of

1923 and the Supplements of 1930 and 1931 is noted as having been first enacted in 1868, when, in fact, the outline at least of county government was set by the Laws of 1860.

The very fact that the county system has had a continuous existence since 1860 makes it necessary to present the history of county development since 1860 in different form from the county history before that date. There are no convenient periods into which the history of county government can be broken, as there were in the territorial period. There were no complete revisions to serve as mile-posts in the development of the county system. Important changes were made, but they were not wholesale changes, changes which created what could be considered a new system. Instead of presenting successive revisions of the county structure, as this discussion of county history has thus far done, this chapter will show the more gradual growth that has taken place in the period of statehood, selecting only what appear to be the most important developments in county structure.

Changes in the System of Assessment

Probably the most important change in county government after 1860, at least the one which went furthest toward the abandonment of the plan of 1860, was made in 1867, when, in the revival of the township assessor, a long step toward what we have called the

"supervisor system" of 1858 and 1859 was made. The early act had provided for a county board of supervisors made up of the chairmen of the various township boards, assessment by the township assessors, and tax collection by the township treasurers.³ The act of 1869 revived only one of these three features, the assessment by the township assessor. Even in this particular the plan differed somewhat from the earlier system. The earlier plan had provided for an elective assessor in each township,⁴ while the act of 1869 provided that the trustee of each township should be ex officio assessor for the township.⁵ All incorporated cities of the first and second class were declared townships for the purposes of the act and were authorized to elect assessors.⁶ The earlier plan had provided an assessor for each ward of each city.⁷

The act of 1869, of course, abolished the office of county assessor, but the county still retained a slightly greater degree of control over assessment than it had had under the law of 1858. The early law had provided that the county board might sit as a board of equalization of assessment with power to raise or lower the aggregate assessment of any township or ward in the county.⁸ The act of 1869 enlarged this control by permitting the county board to adjust the assessment of individual properties, thus acting as a board of equalization within, as well as among, the townships.⁹ Tax

collection remained a county function, and the county board was given the power to fill vacancies in the office of township trustee.¹⁰ Even with these modifications, the act of 1869 moved a long way in the direction of decentralized county government, for it provided decentralization in one of the most important county functions.

This system of assessment by the township assessors was continued for nearly 40 years, until 1907, when the tax system was largely revised and a county assessor provided. The county assessor was to be chosen by the county board for a two-year term, and was to have the power of appointing deputies with the consent of the county board.¹¹ He was required, within the limits of the act, to appoint each township trustee as a deputy,¹² and he was to choose deputies in each city with the consent of the mayor and council of the city.¹³ At the same time, the state board of railway assessors and the state board of tax equalization were consolidated into the state tax commission,¹⁴ and the commission was given a considerable measure of control over the local assessors. The tax commission was given power "to have and exercise general supervision over the administration of the assessment and tax laws of the state, over the township and city assessors, boards of county commissioners, county boards of equalization, and all other boards of levy and assessment" ¹⁵

In 1909, the office of county assessor was made an

elective one except in counties under 12,000 in population where the county clerk was made ex officio county assessor.¹⁶ In other counties the assessor was to be elected biennially as are other county officers.¹⁷ This with slight changes remains the system in use in Kansas. The county assessor, in addition to his power of appointing his deputies, is given certain authority in instructing them and supervising their work.¹⁸

The Composition of the County Board: 1860 - 1932

Another important development in county organization since 1860 has been in the nature of the county board, its composition, and the method of election and the method of election and tenure of its members. The territorial act of 1860 provided a county board of three members, elected from separate commissioner districts for three year terms.¹⁹ The Wyandotte constitution provided that all county officers should have two-year terms,²⁰ so it was necessary to change the terms of the county commissioners. This was done in 1861 at the first session of the state legislature.²¹

The next modification of this plan came in 1867 when an act was passed providing that the county board in all counties of more than 24,000 population should consist of a member from each township, and from each ward of every first or second class city in the county.²² These commissioners were to serve two-year terms, half going out of office each year. To establish this feature of over-lapping

terms, half of the members of the first commission under this law were to hold office for only one year. That half was to be determined by drawing lots. The remaining counties of the state, those under 24,000, were to continue under the act of 1861.²³ This law was practically a special act, for, during the time that it remained in force, only Leavenworth county attained a population sufficient to come under the terms of the act.²⁴ The effect of the law was to give Leavenworth county a commission of 12 members.

The act of 1867 was not only limited in the number of counties to which it applied, but it was also of very short duration. In the General Statutes of 1868 it was modified in several important respects. In counties over 24,000 the commissioners continued to be chosen from townships and wards, but "at the same time and in the same manner as representatives in the state legislature".²⁵ In other words, the commissioners were given annual terms.²⁶ In counties smaller than 24,000 population, the system of electing commissioners from three special commissioner districts was continued. The term of commissioners in these counties was made the same as that of other county officers,²⁷ two years.

This act too, in so far as it concerned counties of more than 24,000 population, applied only to Leavenworth county. Its application there led to a court action in which those portions of the acts of 1867 and 1868 which limited any commissioner to a term of one year were declared uncon-

stitutional. The court ruled that county commissioners, even when they are chosen from townships, are county officers and subject to that provision of the constitution requiring all county officers to be elected biennially.²⁸

This decision made a further enactment necessary, and a law of 18⁷61 provided that in all counties of more than 30,000 population the county board should consist of one commissioner from each representative district in the county, chosen at the same time and in the same manner as the representatives in the legislature, but for two-year terms.²⁹ Again, this portion of the act was practically a special act, for only Leavenworth county attained sufficient population during the time the law was operative to come under its provisions.³⁰ The effect of the law was to give Leavenworth county a county board of four members, two of whom were from the city of Leavenworth. In counties smaller than 30,000 the practice of electing three commissioners from districts for two-year terms was continued.³¹

The act of 1861 remained in the statutes for thirty years, but it was made largely inoperative by a constitutional amendment adopted in 1876.³² This amendment provided that all county officers except commissioners should hold office for terms of two years. The terms of commissioners were changed to three years, and it was required that each county be divided into special districts for the election of commissioners, three of whom should be chosen from each county. This was in exact accord with the provisions of the law of 1871 as it applied to counties smaller than 30,000,

but by implication at least it abrogated the provision regarding counties larger than 30,000. In 1888, the supreme court of Kansas in interpreting this amendment stated,

"Section 3, Article 9 of the Kansas Constitution has required the election of county commissioners by districts numbered one, two, and three, ever since 1876."³³

In 1901 the law of 1871 was finally repealed, and an act passed providing that each county should be divided into three commissioner districts which should be rearranged by the county board at least every three years. An exception was made in the case of counties having three representatives in the state legislature. In such counties the representative districts were to serve as commissioner districts, without action by the county board.³⁴

Much these same provisions were included in an amendment to the state constitution which was passed by the legislature in 1901 and adopted by the voters of the state at the November election in 1902. This provided that all county officers should hold office for a term of two years, except county commissioners, whose terms should be set by the legislature, not to exceed six years, and who should be chosen from three especially designated districts by the voters of the district.³⁵

This amendment granted the legislature a certain discretion in fixing the terms of county commissioners, but that was not the main purpose of the amendment. Its real object was to provide a uniform system of elections. The election law of 1861 stated that a portion of the

county officers should be elected in even-numbered years and the remainder in odd-numbered. In each county, the county superintendent of public instruction, the county attorney, the probate judge, and the clerk of the district court were to be elected on the first Tuesday after the first Monday in November of even-numbered years, the same years in which state and national officers were chosen. The remaining county officers, the sheriff, coroner, county commissioners, county clerk, county treasurer, register of deeds, county surveyor, and county assessor were to be chosen³⁶ biennially in odd-numbered years. During the years when annual elections to the legislature were held this was not as illogical a system as it now seems, for the election of a part of the county officers in odd-numbered years did not then, of itself, require annual elections. After the annual election of representatives was abandoned in 1876³⁷ and it became necessary to hold a separate election for a few county officers only, the need for uniformity became apparent. This uniformity was secured in the amendment of 1902 which provided that general elections should be held biennially on the Tuesday succeeding the first Monday in November.³⁸

The amendment was adopted in November, 1902, and the following year the term of county commissioners was again changed, from three to four years. County commissioners still serve for four-year terms, two being chosen at one general election and one at the next in each county.³⁹

General and Special Legislation Regarding Counties

Counties in Kansas are subject, of course, to legislative control, but the question of whether they shall be controlled by general or special act has never been entirely settled one way or the other. All Kansas counties have been established by special act and a great amount of special legislation has been passed regarding counties. These special acts were most common during the territorial period when the legislature was unrestricted in its power to pass special laws. Laws authorizing special elections, acts changing boundaries and county seats, retroactive measures authorizing bond issues^{or} legalizing acts of officers, and many other special acts designating counties by name and making no pretense at being other than special acts were passed by the various territorial legislatures.⁴⁰ At the same time counties were supposedly governed under the general county code. Despite a great number of exceptions in the form of special legislation, the counties, in theory at least, received uniform treatment.

The Wyandotte constitution attempted to limit the power of the legislature to pass special legislation by requiring that all general laws be uniform throughout the state, and that no special act be enacted where a general law is applicable.⁴¹ This provision attempted to recognize the genuine need for special acts under certain conditions while establishing the principle that most laws should be general in character. The effectiveness of the

provision as a limitation upon the power of the legislature to pass special laws was greatly lessened, however, by the fact that no definite authority was provided for deciding when general laws were applicable and when special laws were necessary. The supreme court of the state early decided that the power of determining when a special act is needed is vested in the legislature.

In 1862 in a case testing the validity of a law locating the county seat of Franklin county the court ruled,

"We understand this section of the constitution as leaving a discretion to the legislature, for it would be difficult to imagine a legislative purpose which could not be accomplished under a general law. If it be possible, as we think it is, to frame a general law under which the purpose of any special law could be accomplished, then that provision of the constitution, if literally construed, would absolutely prohibit all special legislation. Such is not its purpose. It recognizes the necessity of some special legislation, and seeks only to limit, not prohibit it." 42

This same opinion was repeated in many other cases until by 1889 the court was able to say,

"This is no longer an open question. It has been held that the legislature must determine whether the purposes of a particular law can or cannot be accomplished by a general law." 43

Naturally, such a provision, depending upon the interpretation of the legislature itself, was not a strong check upon that body, and, in fact, a great amount of special legislation was passed and was sustained by the court. But the power of the legislature to pass upon the validity of its own special acts was not absolute. The court had allowed the legislature a reasonable discretion, but

upon occasion it set aside laws which exceeded that discretion. Laws which were clearly special acts passed when general acts would clearly have been possible were declared unconstitutional; but within a reasonable discretion the legislature was upheld.

The result of the adoption of the constitution in 1861 was to lessen the amount of special legislation somewhat, but not to eliminate it completely, or even to check it very considerably. The legislature naturally tended to construe its acts liberally. Much the same kind of special legislation was enacted as had been passed by the territorial legislature, although it may have been less in quantity. Counties were organized, salaries in certain counties were regulated, county high schools were established, ordinances were validated, all in special acts which were sustained by the courts. The session laws of this period contain many an act specifically naming a certain county or counties, straight-forward special legislation.⁴⁴

This condition continued until 1906 when a constitutional amendment which had been passed at the 1905 session of the legislature was adopted by the people. The amendment provided that the question of whether a special law is necessary or not, or whether a general law is applicable shall be construed and determined by the courts of the state.⁴⁵ The result of this provision was, as was intended, to increase the effectiveness of the limitation on

special legislation. The courts proved much less lenient in admitting the necessity of special acts than the legislature had been. The immediate effect was the virtual disappearance of obviously special acts, acts which named specific counties, from the statutes. By the session of 1909 there was a noticeable absence of acts specifically referring to certain counties, and today such acts are very few indeed.

The ultimate effect of the amendment of 1906 was not, however, to eliminate special legislation. Special legislation continues in the guise of general law. Since 1906 there has been a noticeable increase in the session laws in the number of acts which by means of a special classification have been limited in their application to a single county. The courts in Kansas, as in many other states, have generally held that a law applying to all the counties in a class is a general law, even though the class be a limited one. That principle allows for such desirable practices as the classification of cities, but it also allows for disguised special legislation. We have already seen how a classification of Kansas counties based upon population was devised so as to give special treatment to Leavenworth county.⁴⁶ That law was not really objectionable, for while it was worded so as to include only one county, it was not so complexly phrased as to make it difficult for other counties to grow into that class, and, in fact, before the act of 1871 was repealed in 1901 some eight counties

had acquired sufficient population to come under the law.

It is since 1906 that the power to classify counties has been widely used as a means to pass special acts. Now, when the legislature wishes to legislate for a particular county it devises a class based upon population, valuation, area, number of oil wells, possession of a condemned court house, or what not, or any combination of characteristics, which will include only the county the legislature wishes to affect. One of many such laws chosen from the statutes will illustrate the type special act which is accepted as general.

"The board of county commissioners in every county having a population of not less than 20,000 nor more than 23,000 and having an assessed valuation of not less than \$43,000,000, nor more than \$44,000,000, and having a county asylum and desiring to replace the county asylum with new buildings, is hereby authorized, if in its judgment it is advisable, to rebuild, remodel, or repair the buildings thereon as they deem best and advisable for the best interests of the county.⁴⁷

Not only is this special legislation, but it is a very annoying kind of special legislation. Classifications are made so complicated that it is difficult for public officials to know just what counties are included under such laws. More than that, the population and valuation of counties change so rapidly that a law phrased to apply to a given county one year may not apply to it at all the next year. There are in the Kansas statutes laws of this sort which no longer apply to any county at all. There are counties in Kansas which assumed functions under special laws of this kind and now find themselves without authority in law for

the performance of the function, since they have grown out of the classification to which the law was made to apply. Counties now derive their powers from the general county code, from the few remaining special acts, and from the many special acts in the guise of classifications. Clearly, the amendment of 1906, while it has reduced the amount of openly special legislation, has not simplified the problem greatly.

It is perhaps surprising that amid all this classification of counties for special purposes they have not been divided into permanent classifications on some logical basis such as population or valuation. Cities in Kansas are divided into three classes on the basis of population, and, in addition, they are given an option in choosing the form of government they will have. Counties, on the other hand, excepting those given special treatment in special legislation, are treated uniformly. Only one form of county government is provided for all the counties, and that, in most respects, is the same in all the counties from the semi-urban county of Wyandotte to the sparsely-settled rural county of Greeley. There are some genuine classifications of counties for special purposes, classifications which are so phrased as to include more than one county, and which seek to recognize the varying needs of counties of various sizes. In counties of more than 65,000 population, for example, an elective county assessor is provided in each county, while in smaller counties the county clerk is ex officio county assessor, except where the electorate has voted to elect an assessor.⁴⁸ This is a

classification which includes the three largest counties of the state and is in effect, as well as in form, a general law. There are other examples of this sort, laws which really seek to classify the counties on some reasonable basis for the purpose of authorizing some function or creating some office, but no effort is made to classify counties for all purposes. Most of these classifications are disguised special acts.

The Change from the Fee to the Salary System

Any summary of the more important developments in county government in Kansas during the period of statehood must include the change from the fee system to the salary system of paying county officials. The fee system was used in Kansas counties throughout the territorial period, and it continued into the period of statehood. The system is based upon the theory that public officials should be paid in accordance with the amount of work they do and that the offices should not be supported out of taxation, where they can be made to pay for themselves. Much of the work of the early counties consisted of keeping records of one sort or another and in performing judicial functions. This work was of such a nature that fees could readily be charged for its performance. For making and recording a survey for an individual the county surveyor could fairly charge a fee. The costs of a judicial action were fairly chargeable to the litigants, and those costs included fees for the sheriff, the clerk of the court, and often for other officials as well. So many public functions of this sort were at the same time

services to private individuals that it was not unreasonable for the idea to prevail that public officials should be paid, largely, at least, by the people who used their services. The officials were deemed to be adequately paid and the public properly protected when the law had set a uniform schedule of fees for various kinds of service, and had provided penalties for collecting fees in excess of the amount set by law.

Such, at least was the case with most county officials. A few, however, performed functions which were more public than private, and could not so readily be assessed against individuals. The county commissioners, for example, and the county treasurer, could hardly be paid by the fee system. The treasurer could not well charge a fee for the collection of taxes, his chief duty; and the commissioners, in their work of levying taxes, appropriating money, and otherwise administering the affairs of the county, had no opportunity to charge fees. But even in these cases the early laws did not provide salaries. The statutes of 1868, which embody the fee system, provide for the payment of commissioners by the county, but on a per diem basis, with limitations as to the number of days for which each commissioner could claim pay.⁴⁹ The treasurer, too, was paid in proportion to the extent of his duties, for he was allowed to keep a percentage of the taxes and other money he collected.⁵⁰ The law even called this percentage a fee for the collection of taxes and other moneys. A few other officers, such as the sheriff, for example, for taking prisoners to the penitentiary, were paid in part from

the county treasury; but most of the officials were paid in fees collected for services rendered.⁵¹

The fee system has the advantage of distributing the burden of maintaining public functions according to benefit derived, and for that reason the practice of charging fees for many kinds of public service remains. It has the disadvantage of making public salaries variable and to a certain extent unknown in quantity. The opportunities for speculation are greater when the fees are kept as salaries by the officers who collect them than when they are turned into the public treasury. Moreover, in small counties, the dependence upon fees is likely to lead to underpayment of public officials, and as the counties increase in size, to overpayment. These factors have led to the complete abandonment of the fee system of paying county officers in Kansas, and to the substitution of the salary system.

The first step in this direction came in 1875 when fixed salaries to be paid out of the county treasury were provided for the county clerk,⁵² the county treasurer,⁵³ the county attorney,⁵⁴ and the county superintendent of instruction.⁵⁵ The salaries varied according to the size of the counties. The practice of charging fees in these offices was retained, and in the case of the county attorney, the salary set was only a minimum, to be supplemented by the fees collected by him.⁵⁶ In the case of the clerk and the treasurer, the fees were to be paid into the general fund of the county. This was the beginning of

the movement to abandon the fee system, but it left untouched such important offices as sheriff and probate judge.

The second step in this movement was taken in 1897 when a modified salary system was provided for most of the principal county officers. The county clerk and county treasurer continued to receive a salary alone, and the county attorney was by this law placed upon a salary basis.⁵⁷ The county commissioners were to be paid, as before, on a per diem basis, but with a maximum annual salary set by law for each class of county. The sheriff, register of deeds, clerk of court, and probate judge continued to be paid by fees but with the provision that all fees in excess of a certain amount must be divided with the county. The maximums varied with the size of counties and were set by law. Thus the sheriff of a county of 15,000 to 20,000 population might keep fees to the amount of \$1,600 per year, but of the fees collected in excess of that amount he was required to pay one-third to the county treasury.⁵⁸ Similar restrictions were imposed upon the register of deeds, clerk of court, and probate judge.⁵⁹ A precedent for this system may have been found in a provision of the statutes of 1868 limiting the fees of county treasurers to \$2,000 per annum.⁶⁰

This combination fee and salary system of paying county officers continued until 1913 when the fee system was virtually abandoned.⁶¹ Except for the commissioners, all the county officers were put on a salary basis, but some

exceptions were made to the general rule that all fees should be paid into the county treasury. The salary of the commissioners remained on a per diem basis. The county attorney was allowed to keep in addition to his salary such fees as were paid him under the state prohibitory law,⁶² and several officials such as the county superintendent, and especially the sheriff, were allowed to present claims for expenses for various functions supplementary to their regular duties.⁶³ Expense allowances are mentioned here in connection with fees for the reason that some of these allowances are actually larger than such expenses are likely to be, and so make a genuine addition to the income of the officer receiving the allowance. Particularly is this true of mileage allowances. The common allowance for county officials is 10 cents per mile, probably a larger sum than most travel for the county costs, and certainly more than many private businesses consider necessary to allow their representatives.

Since 1913 the scale of salaries has been changed several times, and a great variety of exceptions to the general rule have been provided by disguised special act, especially in the larger counties, but the fee system has not been revived. Fees are still charged, in order to distribute a part of the burden of government according to the principle of benefit derived, but the fees are nearly all paid into the county treasury to provide the funds from which the county officers are paid almost entirely by salaries set by law.

CHAPTER V

THE PRESENT COUNTY ORGANIZATION

The County Board

County government in Kansas is largely decentralized. The powers of the county are principally administrative, but there is no administrative head in county government to correspond to the governor of a state or the mayor of a city. There is not even the degree of centralization that is found in the commission plan of city government. There is, however, a county board of commissioners which in some respects resembles the city commission, and which, while it exercises no direct control over the other elective officials of the county, is the nearest to an administrative head that the county system includes.

The composition of the board of county commissioners, its method of selection, time of meeting, powers, etc. are provided in the statutes of the state, and are, in most important respects, uniform throughout the state. The board, in all the 105 counties of the state, is composed of three members chosen from special districts into which the county has been divided.¹ The commissioners must be qualified electors resident in the districts from which they are chosen and may not hold any state, city, township or other county office or be stock-holders in any railroad in which

the county holds stock.² Commissioners are chosen at the general election held biennially in November, and their terms are so arranged that one is elected at one biennial election and two at the next.³ Each commissioner assumes office on the second Monday in January following his election, and holds office for four years and until his successor has been chosen and has qualified.⁴ Vacancies in the office of commissioner are filled by the other members of the board and the county clerk, from among the electors of the district in which the vacancy occurred.⁵ Persons so appointed hold office only until a successor is chosen at the next succeeding general election, and has qualified. To qualify, a county commissioner must give a bond signed by himself and two or more good sureties in an amount not to exceed \$5,000, but equal to one-fifth of the total assessed valuation of the county for the preceding year. This bond must be executed before a judge, justice of the peace, notary or other officer possessing a seal, must be approved by the register of deeds of the county and filed in his office.⁶

The board of county commissioners is required by law to meet on the second Monday in January following the general election, or within thirty days thereafter, and to organize the board by electing one of the members chairman.⁷ They also elect a chairman pro tempore, and are authorized to provide rules for the conduct of the business of the board.⁸ At the same meeting at which the organization of the county board takes place, the board is required by law to divide the county into three commissioner districts "as compact and

equal in population as possible, and number them 1, 2, and 3, respectively".⁹ These districts are subject to alteration at least every three years, but the failure of the board to re-district the county shall not prevent the election of commissioners. Counties having three representatives in the state legislature are exempt from these provisions regarding districting, for in such counties the representative districts of the county are designated to serve also as commissioner districts.¹⁰

The statutes require that the county board shall provide itself with a seal and shall annually provide the other officers of the county with office equipment and a seal, where such is required by law.¹¹ The board must hold regular meetings which are open to all who conduct themselves with propriety. In counties of more than 50,000 population, meetings of the board must be held not less than twice each week.¹² In counties smaller than that, but with a population of more than 8,000, meetings of the board must be held on the first Monday of each month, and in counties smaller than 8,000 population they may be held that frequently.¹³

The compensation of county commissioners in all the counties of the state under 90,000 population, and not operating under the county road unit plan, is on a per diem basis. Each commissioner is allowed five dollars for each day employed in county work and ten cents per mile travelled at his own expense in transacting county business.¹⁴

Limits are imposed, however, upon the amount of money that can be paid each commissioner annually. These limits range from \$400 annually in counties with a population of less than 5,000, to \$1,500 annually in counties with a population of from 50,000 to 90,000.¹⁵ In counties smaller than 90,000 population, operating under the county road unit plan, the per diem system is not used. Each commissioner is given an annual salary ranging from \$600 in counties of not more than 10,000 population to \$1,500 in counties of from 35,000 to 90,000.¹⁶ There are only two counties in the state larger than 90,000 population. Each is placed in special classification which gives the commissioners of one county (Wyandotte) a salary of \$3,000 each, annually,¹⁷ and the commissioners of the other (Sedgewick) a salary of \$3,600 each.¹⁸ In both counties the commissioners are allowed necessary expenses in addition to their salaries.

The county in Kansas is described as "a body corporate and politic" with power to sue and be sued, purchase and hold real and personal property and lands sold for taxes, sell and convey the real and personal property of the county and make such order concerning it as shall be conducive to the well-being of the inhabitants of the county, make all contracts and other acts necessary to the exercise of corporate or county powers, and exercise such other powers as may be conferred by law.¹⁹ These powers of the county as a body corporate and politic are exercised by the county board.²⁰ It is specifically provided, for example, that the

county shall sue as "The board of county commissioners of _____ county",²¹ and property the county owns as a corporate body is held in the name of the county board.

The list of general powers granted the county board by the statutes seems very considerable. The board is authorized at any meeting to:²²

1. Make such orders concerning county property as it deems expedient.
2. Examine and settle all accounts for and against the county and issue county orders for the payment of expenses.
3. Purchase sites for, build and keep in repair, county buildings, and have them insured in the name of the county treasurer.
4. Apportion and levy taxes according to law and borrow money to build county buildings or pay current expenses of the county if there is a deficit in the county revenue.
5. Represent the county and care for property in all cases where there is no other provision by law.
6. Set off, and organize townships, and change their boundaries, provide names for them, appoint temporary officers until the next election, and fix the time and place of holding the first township election.
7. Establish one or more election precincts in each township.
8. Lay out or alter a road running through one or more townships and perform such other duties in regard to roads as are provided by law.
9. Alter and change the route of any state road within their respective counties.
10. Grant licenses for bridges and ferries and other licenses as are provided by law.
11. Perform such other duties as are prescribed by law.

The board is, in fact, the general governmental agency of the county, with powers which, while they are generally administrative, are sometimes legislative, and in a few cases, judicial.

This enumeration of general powers, is however, misleading. The power of the county board with regard to many of the above functions is greatly limited by other, more specific laws. The power of the board, for example, to borrow money, is limited by the fact that any proposal to borrow money on the credit of the county must be approved by a vote of the people.²³ The power to levy taxes is definitely limited in a great number of statutes, usually on the basis of mills to the dollar of taxable property in the county. The power of the county board to control state roads has been entirely eliminated.²⁴ Even in the exercise of a power as distinctly a function of the county board as the right to pass upon bills presented for payment is closely limited by law. The board must allow claims monthly at regular meetings.²⁵ It may reduce but may not increase the amounts allowed upon bills by the county auditor.²⁶ It may allow only bills that have been itemized, and it must publish a list of bills allowed after every county meeting.²⁷

The general powers of the county board have been greatly supplemented by specific statutes. Many of the more recent additions to the powers of the county are

granted in the form of permissive statutes, which add considerably to the discretionary power of the board. Usually the question of whether these functions shall be assumed is left to the county board to decide, but often the approval of the electorate is required, and in many cases provision is made for the initiation of such proposals by a petition signed by a certain percentage of the voters of the county.

The county board has practically no direct control over the administration of the various elective county offices. It gains a measure of indirect control through a limited power of appointment which, however, is confined chiefly to the filling of vacancies; and through a still more limited right of removal. As a matter of fact, the principal power of the county board is financial. The right to levy and appropriate the county revenue, although under strict statutory limitations, nevertheless gives the board a certain control over the functions of the elective officials. Perhaps the best example of this sort of control may be seen in the various provisions which authorize the board to determine, within limits, how much shall be allowed for clerk and deputy hire in the county offices, but other provisions, such as that authorizing the board to control the furnishing of supplies to the various offices, are also important.

Most of the county functions, such as the recording of instruments, probate functions, and law enforcement, are under the direction of the various elective county offi-

cers; but over two important functions the county board does exercise a large measure of direct supervision. They are the building and maintenance of public roads,²⁸ and the conduct of poor relief.²⁹ The county engineer is appointed by the board of commissioners, as is the commissioner of the poor in counties large enough to have such an officer. In smaller counties the township trustees are ex officio overseers of the poor, but the financing of poor relief is a responsibility of the board of commissioners of the county.

The County Officers

Nine county officers, in addition to the board of county commissioners, are elected in each of the counties of Kansas. They are: (1) the county clerk, (2) the county treasurer, (3) the clerk of the district court, (4) the sheriff, (5) the probate judge, (6) the county attorney, (7) the coroner, (8) the register of deeds, (9) and the county superintendent of instruction. These officers are all provided for, and their duties and powers defined, in the statutes; and at least five of them are mentioned in some respect in the constitution.

Since 1902, as has been stated, these county officers have all been chosen at the same time, at the general election held biennially in November of the even-numbered years.³⁰ All serve for two-year terms, and all except the treasurer and the county superintendent take office on the second Monday of January of the odd-

numbered years.³¹ The term of the county superintendent begins on the first Monday in July,³² and that of the county treasurer on the second Tuesday of October of the odd-numbered years.³³ The sheriff and the treasurer are prohibited by the constitution from holding more than two successive terms.³⁴ An amendment to eliminate this provision has been adopted by the legislature and will be submitted to the electorate in November 1932.³⁵

All of these elective county officers are required to post bonds for the faithful performance of their duties. The bonds of all except the clerk, coroner, and register of deeds must be approved by the county board, in the following amounts as provided by law: county superintendent,³⁶ \$1,000; clerk of the district court, \$2,000 to \$60,000;³⁷ probate judge, \$2,000 to \$25,000;³⁸ sheriff, \$2,000 to \$20,000;³⁹ county attorney, not less than \$2,000;⁴⁰ and the county treasurer, such amount as the board shall prescribe. If the board fails to designate an amount, the treasurer's bond shall be not less than twice the amount of money levied in the county and paid to the treasurer in the preceding year.⁴¹ The bond of the county clerk must be approved by the treasurer and must amount to not less than \$2,000.⁴² The coroner is required to post a bond of \$500 to \$5,000,⁴³ and the register of deeds a bond of not less than \$2,000;⁴⁴ in each case the bond being subject to the approval of the county clerk.

Nomination of candidates for elective county offices is by primary election. Any person desiring to become a

candidate for a county office in the general election must either be selected by the party of his affiliation in the primary election held on the first Tuesday in August preceding the general election, or must file as an independent candidate.⁴⁵ Kansas primary elections are "closed" partisan primaries. By act of 1927 the registration of the party affiliation of each voter is required. Party affiliation must be declared by the voter at each primary, and party affiliation can be changed only by filing notice of such change with the county clerk not less than thirty days before the primary election.⁴⁶ To become a candidate in the primary, a person must file a declaration of his candidacy with the county clerk not later than noon of June 20 preceding the election. This declaration must be accompanied by a petition bearing the signatures of a certain percentage of the voters of the county, or by a fee. In the case of candidates for county offices the petitions must be signed by at least three per cent of the party vote in at least one-fourth of the election precincts of the county, and an aggregate of not less than three per cent nor more than ten per cent of the total party vote of the county.⁴⁷ When a fee accompanies the declaration of candidacy it must be \$5 for all offices paying a salary of \$1,000 per year, or less, and must amount to one per cent of the annual salary of any office paying more than \$1,000 per year.⁴⁸ Persons who desire to become independent candidates for county offices may do so by filing nomination petitions with the county clerk not later

than noon of June 20, preceding the election. If June 20 falls on Sunday, noon of the following day shall be the time limit for the filing of nomination papers. These nomination papers must be accompanied by petitions signed by not less than five per cent of the voters of the county who voted for secretary of state in the last preceding general election, and in any event not fewer than 25 voters of the county.⁴⁹

Vacancies in the offices of register of deeds, county clerk, county treasurer and county superintendent of instruction are filled by the county board of commissioners.⁵⁰ In the case of county superintendents, this is supplemented by the provision that when the county board is unable to fill a vacancy with a suitable person, the state superintendent of instruction shall appoint someone from anywhere in the state.⁵¹ Vacancies in the offices of sheriff, probate judge, and coroner are filled by the governor of the state,⁵² and vacancies in the offices of clerk of the district court and county attorney by the judge of the district court.⁵³ In all cases persons appointed to fill vacancies hold office only until the next general election, at which time persons are chosen to fill the vacancies for the remainder of the term.⁵⁴

In addition to the nine county officers which are found in all the counties of the state, there are two elective county officers found only in certain counties. The more important of these is the assessor, who is elected

for a two-year term in all counties of more than 65,000 population. This includes only the three largest counties in the state, Wyandotte, Sedgewick, and Shawnee. In counties of 65,000 or under the electorate may choose to establish a separate, elective assessor. This proposal may be initiated by the presentation of a petition to the county board, signed by ten per cent of the voters of the county who voted for secretary of state at the last preceding general election. Upon receipt of such petition the county board must submit the proposal to a vote of the people. In all counties of 65,000 or under in which the electorate has not voted to establish a separate county assessor, the county clerk is ex-officio assessor.⁵⁵

Counties of more than 60,000 population, containing a city of 40,000 population or more, are required to elect a county surveyor except when no competent man is available in the county. Where none is available, the services of the surveyor of a nearby county may be secured. This provision, although differently worded from the one relating to county assessors, also applies only to the three largest counties, Wyandotte, Sedgewick, and Shawnee. In smaller counties the county engineer is ex officio county surveyor.⁵⁶

With this enumeration of elective county officers must be included a limited number of county officials who are appointed by one agency or another. In all counties there is an appointive county health officer, a physician, preferably trained in sanitary science. He is chosen by the county board acting as ex officio county board of

health.⁵⁷ The county board also chooses the county engineer, with the consent of the state highway commission.⁵⁸ Not all counties maintain a separate county engineer, for some have taken advantage of the permission given them to combine with other counties to form county engineer districts.⁵⁹ A separate county auditor, chosen for a two-year term by the district court of the county, is provided for counties of more than 45,000 population. An exception is made in the case of counties of 59,000 to 65,000 population, where the county clerk is made ex officio auditor.⁶⁰ Since there are at the present time no counties in Kansas in that population class, that exception has no effect. Only six counties in the state, Wyandotte, Sedgewick, Shawnee, Montgomery, Reno, and Crawford, had populations of more than 45,000 in 1930. In smaller counties functions similar to those of the auditor are given to the county attorney.⁶¹

To the various groups of county officers which have been enumerated above, one more group should be added. Three classes of county officials have been discussed, elective county officers found in all the counties of the state, elective officers limited to certain counties, and appointive officers whose choice is mandatory in all or some of the counties of the state. In addition, there is in Kansas a growing list of officers and administrative agencies such as boards and commissions which are authorized by the statutes but whose establishment depends upon adoption by the county board or by the electorate. The board of commissioners in the two largest counties of the state may, for example, appoint a special county counselor to take over

the duties of the county attorney in advising the public officials of the county and in representing the county in civil actions.⁶² Counties, by vote of the electorate, may decide to establish county libraries, county hospitals or county parks. Certain counties may establish county tuberculosis hospitals, others county law and medical libraries. The adoption of these and other special functions involves the creation of special administrative agencies in the counties. It is true that these various permissive statutes have not been widely adopted, but their very existence indicates a trend away from the simple, uniform structure of county government, towards a more varied, complicated system adapted to the performance of a growing list of county functions.

The Structure of Township Government

While townships play by no means as important a part in county government today as they did under the supervisor system of 1858, some knowledge of township organization is necessary to an understanding of county government. In many kinds of important county activities, the work of the township officers supplements that of the county officers. In the financial work of the county, in county welfare work, and in road building, especially, township officers perform important functions in what are primarily county responsibilities. The importance of township government to this study lies in these functions which are performed by the townships in cooperation with, or under

the direction of, the county, rather than in the few purely local functions the townships perform independently.

Townships are distinctly rural units. No town of more than two thousand population may be included in a township,⁶³ and any third class city of more than one thousand population, with a taxable valuation of more than \$150,000, may, by a two-thirds vote of the electorate, be separated from the township of which it is a part.⁶⁴ Cities which are not parts of regular townships constitute separate townships for judicial and assessment purposes.⁶⁵ The creation of townships is a function of the county board, which is authorized to establish new townships, to appoint temporary officers in them, and to call elections for the choosing of permanent officers. This power is, however, subject to certain statutory restrictions. No township containing an area of less than thirty square miles and a population of less than two hundred persons may be created. The establishment of a township must be by a petition which has been signed by at least fifty electors resident in the area out of which the township is to be made.⁶⁶

Townships in which the number of electors has fallen below twenty-five may be disorganized by the county board upon presentation of a petition signed by a majority of the electors. When the population of a township falls below ten, the township must be disorganized by the county board directly, without a petition. Records of disorganized townships are turned over to the county board. The floating debt of a disorganized township must be paid by the county

board from a special fund composed of all funds and other assets of the township at the time of disorganization, supplemented by a special tax levied against the property in the area of the township. Such tax may not exceed ten mills on the dollar.⁶⁷

The principal officer of the township is the trustee, who is elected biennially. His powers include the right to divide the township into road districts, to fill vacancies in the office of road overseer, to supervise the expenditure of the township funds, to have charge of the township property, and to levy the township tax. He is ex officio the judge of elections in the township, overseer of the poor and member of the township board of highway commissioners. The trustee, the treasurer, and the clerk constitute the auditing board which audits all accounts and pays all claims against the township. This board also audits the books of the township treasurer and the road overseers. The trustee is required to make a complete report of his work and the work of the auditing board to the county board of commissioners.⁶⁸

The fiscal officer of the township is the treasurer. He is elected for a two-year term. The work of the treasurer consists chiefly of receiving and paying out township funds. Township taxes are collected by the county treasurer and are paid by him to the township treasurer. The township treasurer pays out funds on order of the trustee. The statutes require that township money be deposited in banks within the county designated for that purpose by the township board. Such banks must give bond for

the security of the funds, and must pay interest on the average daily balance of the township, at the rate of not less than two per cent. The treasurer is required to make an annual statement of funds received and bills paid, and the trustee is required to post this statement annually, along with his own annual report, at each polling place in the township.⁶⁹

The other elective officers of the township are the clerk, the justice of the peace and the constable. All of these officials are elected for two-year terms. The clerk is the custodian of the township records, and is required to file in his office all papers, reports and other documents as required by law. The justices of the peace, at least two of which are chosen in each township, are judges of the justice courts. Attached to each court is a constable who is an administrative officer of the court, serving writs and processes, and is peace officer of the township. The constables may appoint deputies, for whose acts they are held responsible.⁷⁰

Bonds must be posted by treasurers, clerks, justices of the peace, and constables, and must be approved by the county board. The bond of the constable is fixed by law at⁷¹ from one to five thousand dollars, that of the treasurer at an amount not less than double the amount of township money that will probably come into his hands during his term of office.⁷² and those of the justice and clerk at such amounts as the county board may determine.⁷³ Vacancies in township⁷⁴ offices are filled by the county board of commissioners. Compensation of the township treasurer, trustee and clerk

is on a per diem basis. Each is allowed \$2 for each day of township work, as well as additional allowances for work as members of the county board of highway commissioners, and, in the case of the trustee, as deputy assessor for the county.⁷⁵

It will be seen that the structure of township government follows closely the pattern of county government. Like counties, townships are bodies corporate and politic with the power to make contracts and to sue and be sued.⁷⁶ For each township officer there is a larger counterpart in the county system. The duties of the constable are, in a small way, like those of the sheriff, the functions of the trustee roughly correspond to those of the county board, the township clerk performs much the same kind of work as the county clerk, and the treasurer and the justice of the peace resemble the county treasurer and the district judge. The methods of transacting business are much the same in townships as in counties. Claims against the township are paid by orders issued in much the same way as are county orders, and oaths and bonds are required of township officers,⁷⁷ as of county officers.

The principal importance of the townships to county government lies in the fact that the chief township functions are performed in conjunction with county work, and to a very large extent under county control. If amount of expenditure is a sound measure, the building and maintenance of roads is the principal function of the townships, yet it is performed under close supervision by the county board and

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the county engineer. Poor relief is really a county function, the administration of which has been delegated to township officers in certain classes of counties. Assessment, likewise, is primarily a county activity, yet it is a chief duty of the township trustee. Over certain matters of local concern, of course, the township exercises a measure of independent control. With the approval of the electors of the township, the township board may purchase land and erect a township hall, may establish cemeteries and public libraries, and may perform a few other similar functions.⁷⁹ The importance of these independent powers, however, is slight, and is apparently diminishing. The status of townships in Kansas lends support to the belief that township functions are being absorbed by the counties, and that the townships will ultimately disappear. Already Kansas townships are important chiefly because of the county activities in which they play a part.⁸⁰

PART III

THE COUNTY FUNCTIONS

CHAPTER VI

THE FINANCIAL FUNCTIONS OF THE COUNTY

The Importance of County Finances

The financial functions of the county in Kansas are of peculiar importance because of the fact that the principal financial officers of the county, the clerk, and the treasurer, serve not only the county but also the state, the city, the township, and, in fact, all the taxing agencies in the state. Upon the county clerk, in his ex officio capacity as county assessor, except in larger counties, where there is an elective county assessor, is devolved the important duty of directing the assessment of the property of the state for the levying of taxes, not only by the county but by all the other taxing bodies. Upon the treasurer is imposed the duty of collecting these taxes levied against property, by the various taxing units. The general property tax, whose assessment and collection is thus made a county function, is the principal source of revenue for all the state's governmental divisions.

But even without these services that the county renders the other governmental divisions, county finances are very important, especially in this time when the cry is everywhere for relief from taxation. More taxes are levied in Kansas for county purposes than for the purposes of any

any other division of government except schools. In 1927, for example, counties levied taxes of \$18,412,513.08, more than 20 per cent of all the taxes levied in the state.¹ The same year taxes for state purposes were \$9,781,822.91, little more than half as much as was levied for counties.² Township taxes amounted to less than half as much as county taxes,³ and city taxes less than two-thirds.⁴ Schools, which are in a class by themselves in spending money, alone exceeded counties in the amount of their levy, getting nearly 40 per cent of the Kansas tax dollar in 1927.⁵

The cost of county government is not only considerable, but it, like the cost of all other government, has shown a marked tendency to increase in the past twenty years. In 1907 the total tax levied in Kansas for county purposes was \$5,205,167.47, less than a third what it was twenty years later.⁶ County taxes have more than trebled in twenty years. But those figures are not sufficient as the basis for an opinion, for, while the costs of county government have trebled, the amount of tax for state purposes has increased more than four times, that for cities nearly five times, and that for schools nearly six times.⁷ The total tax levied for all purposes in Kansas has increased between four and five times, from roughly 20 millions in 1907 to 91 millions in 1927.⁸ If the amount of tax levied is a criterion we must concede that the relative importance of counties has declined. But a division of government which accounts for a fifth of our total public expenditure is far from negligible.

Sources of County Revenue

County revenue in Kansas is derived principally from taxation, and of the tax sources the general property tax is by far the most important. About four-fifths of the total income of Kansas counties is derived from this one source. The remaining fifth of the county revenue is derived from (1) special taxes such as the money's and credits tax and the mortgage registration fee, (2) Fees for services such as court services, and from licenses, etc. (3) Grants from the state such as the grants from the state highway fund to the various county road and bridge funds, and (4) miscellaneous sources such as the sale of county materials and services to other units of government. These secondary sources of income, such as fees, are not only of small amount, but they are incidental to the operation of the county government and commonly no more than pay for the services rendered.

The General Property Tax Levies

The general property tax is a tax levied against property, both real and personal, in proportion to its value as determined by assessment. This proportion is usually expressed in terms of mills to the dollar. Thus, if a county levies a tax of 5 mills, the owner of property assessed at \$1,000 must pay a tax of five dollars. This number of mills levied is called the rate of taxation, and it is fixed, within statutory limits, by the taxing agency. The first step in determining the tax rate consists of determining the amount of revenue that the taxing agency will need. In the county this is done by the county board.

The second step is to determine the valuation of the property against which the rate will be levied. Then the division of the amount of tax to be raised by amount of the property against which it will be levied will give a figure which may be expressed in terms of mills per dollar, the "tax rate." So in a county in which the valuation is \$10,000,000 and the amount of tax to be raised is \$75,000 the tax rate would be \$7.50 per \$1,000 of valuation, or 7.5 mills.

It must be remembered that while the general property tax is collected by the county, the levy against the property includes not only the county levy but also the levies of all the other taxing districts in which the property is situated. Each governing body in the state, the state legislature, the county board, the township board, etc. determines its own rate of taxation. The rates applicable to each piece of property in the county are added by the county clerk to determine the total rate at which the property shall be taxed.⁹ Thus a rate of 28 mills charged against a farm may include a state tax of 2 mills, a county tax of 12.8 mills, and a school-district tax of 13. mills.

Moreover, the county levy itself is made up of several different levies. There is, first of all, a levy for the county general fund, a levy for the bridge fund, the road fund, and the poor fund, and there may be other levies. Most of these various levies are, in part, regulated by statute. Some special levies are made mandatory upon the county board.¹⁰ Others may be made mandatory by a vote of the electorate.¹¹ Even more common are restrictions as to

the maximum amount that may be levied for a given purpose. It is hardly necessary to enumerate here all the limitations that are imposed upon the county's power to levy taxes, but a few of the more important restrictions will serve as illustrations. County boards are required, for example, to levy a road tax of from .25 to 1.5 mills on every dollar of valuation.¹² For the purpose of limiting the tax that counties may levy for the payment of current expenses, an extensive classification of counties on the basis of assessed valuations, has been made. These limitations range from a maximum of 3.5 mills in counties with a valuation of \$5,000,000 or less, to a maximum of 1.6 mills in counties of more than \$100,000,000.¹³ For the county bridge fund the county may levy a tax of no more than 1.5 mills.¹⁴ In times of emergency, such as might result from a disastrous flood, tornado, or from public disorder such as an insurrection, the county board may levy a tax of not more than 1 per cent of the total assessed valuation of the county to aid in relief work in the county.¹⁵ These are only a very few of the restrictions upon the power of the county board to levy property taxes. To enumerate all the limitations, general and special, that the statutes include would be a well-nigh endless task.¹⁶ Other of the more important limitations will be considered later in this discussion when certain county functions are considered in more detail.

The Assessment of Property

The process of evaluating property for purposes of taxation is called assessment. The valuation, we have seen,

is an important factor in determining what the rate of taxation shall be. It is of the utmost importance that the valuation be fairly and equitably determined. In theory, all property in Kansas is assessed at 100 per cent of its value, but the question of whether it is or not depends largely upon the effectiveness of the assessment methods. Since county revenue depends so largely upon the general property tax, an understanding of the assessment process is important in a study of county government. Moreover, the county itself plays an important role in assessment.

It should not be thought, however, that assessment is entirely a county function. It is true, as has been pointed out above,¹⁷ that Kansas no longer uses the township system of assessment, but it should be remembered that the townships and cities are still the basic units for assessment purposes. It is true also that every county has a county assessor, in most counties the county clerk, who has certain powers of supervision and appointment in the assessment process, but it should be noted that he does little actual assessment himself.

The work of assessment is performed by the township and city deputy assessors. These officers are appointed by the county assessor with the consent of the county board of commissioners. But the county assessor's power of appointment is definitely limited. He is required by law to appoint as assessor in each township the township trustee. If in the opinion of the county assessor and the county board, the township is so large as to need two or more assessors, it

may be divided, and additional deputy assessors appointed, one to each district. But the township trustee must remain as deputy assessor in one of the districts of his township.¹⁸ The county assessor may remove any deputy assessor, subject to the approval of the state tax commission or some member of it. A hearing upon the removal must be held by the commission or commissioner at the county seat.¹⁹

The deputy assessors do their work under the general supervision of the county assessor. He is authorized to give them preliminary instructions, and to furnish the tax schedules, books, etc. that have been supplied him by the state tax commission.²⁰ He is nominally vested with all the rights and powers that are given by law to the deputy assessors, but he is prohibited from actually assessing any property except such as has been missed by the deputy assessors.²¹ He is also authorized to assess the property of any telegraph, telephone, pipe-line, or electric power company whose property is entirely within his own county.²²

Inter-county public utilities, and railroads are assessed directly by the state tax commission, and the valuation of such property in each county is certified to that county by the commission, to be added to the tax rolls of the county.²³ The property within the county subject to taxation is divided into real and personal property. The former class, consisting of land and buildings, is assessed quadrennially, although any county board may order a special assessment in any even year.²⁴ Personal property is assessed annually, although the bulk of the personal pro-

perty is not taxed under the general property tax, but, consisting of moneys and credits, is taxed under the "intangible tax" law.

The Process of Assessment

The assessment of property begins with the appointment of the deputy assessors. This must be completed on the second Monday in January in cities, and before the second Wednesday in February in townships.²⁵ Each municipal township and each city of the first or second class constitutes an assessment district, and each district is served by one or more deputy assessors, the number being determined by the county board and the county assessor.²⁶ In most counties, the township trustees, whose appointment as deputy assessors is made mandatory upon the county assessor, constitute the bulk of the deputy assessors. These deputy assessors are furnished the forms, blanks, books, etc. that they will need in evaluating property, by the county assessor, who has procured them from the county clerk.²⁷ Sometime before the assessment begins the county assessor instructs each deputy as to the methods of assessment. He may do this by visiting the deputies, or he may call them in a special meeting to talk over valuations, methods of writing up the forms, etc.²⁸

The actual work of assessment begins on March 1 of each year, and the assessment is made as of that date.²⁹ The various deputy assessors are required to visit every owner of taxable property in their districts, and secure from him a statement of personal property in his possession.

In general, personal property is assessed at the place in which it is situated, although there are exceptions to this rule. Real property is assessed in rem; that is, the assessment is made against the property itself, while assessment of personal property is made against the owner or person in possession of the property. The statutes provide detailed forms for the making of assessment returns by taxpayers, and these are supplemented by instruction books issued to the deputy assessors by the state tax commission.³⁰

Individuals are required to list their personal property according to the classifications of property that the assessor's schedules include.³¹ Listing includes stating the value of the property, but the assessor is not required to accept the valuation placed on the property by the owner. Special provisions in the statutes govern the listing of property and equipment by merchants and manufacturers, the assessment of whose property is one of the most difficult tasks of the deputy assessors.³²

The deputy assessors commonly discuss property values in advance, and they are likely to arrive at a substantial agreement among themselves as to the value to be placed on a two-year old mule or a seventeen-jewell watch, or other common articles, but when it comes to such technical problems as assessing radio-stations, factory machinery, and motion-picture projectors, they are likely to be very much at a loss. The deputy assessors may gain some help from the assessments of previous years, from the state tax commission, from opinions of real estate dealers,

from sales, and even from insurance claims, in deciding what the real value of property is, but even with all these aids they are still in large measure dependent upon the original statement of the property owner.

In counties of less than 25,000 population the county assessor is paid at the rate of \$5 per day for each day necessarily spent in his work. In counties from 25,000 to 40,000 he is given an annual salary of \$900, and in counties larger than 40,000 an annual salary of \$1,200.³³ The deputy assessors are paid at the rate of \$3 per day for each day necessarily spent in their work.³⁴ The work of the deputy assessors must be completed before the third Monday in May of each year. They must have completed the assessment of the personalty in their districts, and of such real property as the county clerk has informed them has become taxable in the district since the last quadrennial assessment of real property.³⁵ Their assessment books must be corrected and completed, and ready for the use of the county board of equalization.

After the close of the assessment period the county assessor may examine and assess any property which has been omitted from the rolls of the deputy assessors. In performing this duty he is vested with the same powers as the deputy assessors.³⁶ Upon complaint of the county assessor, the tax commission may order a hearing to determine whether a district has been properly assessed. If the hearing discloses that such assessment has not been in substantial compliance with the law, the commission may order the re-assessment of the district by assessors especially appointed

for the purpose.³⁷

The assessment process is safeguarded by extensive statutory directions regarding the assessment of various kinds of property; for example, property which is jointly owned, mineral resources, property which is brought into the assessment district just before or just after the first of March, property which is being transported through the state at the time of assessment, etc.³⁸ Oaths and bonds are required of the county assessors and the deputies, and provisions seeking to prevent fraud by taxpayers in declaring their property have been enacted. The county attorney is authorized to assist in the prosecution of frauds in the filing of statements and to assist in the examination of witness in hearings which the county clerk or county board is authorized to make.

Despite these safeguards, certain problems are inherent in the assessment system. The deputy assessors are not expert assessment engineers. They work only sixty days a year, and their pay is not sufficient to attract the best in ability. These deputies can hardly be expected to have an expert knowledge of the many varieties of property that they will be called upon to assess. One man might conceivably be expert in judging the value of live stock, another of jewelry, and a third of city real estate, but the assessment system allows for the division of the assessment job upon no such lines.

Even if experts were assessing property much might still escape assessment. Real estate can be seen, but many

kinds of personal property can be concealed, or at least not viewed by the assessor who would probably prefer to take a reasonable statement of value from the property owner rather than use the time necessary to make a thorough examination of all the property listed. The so-called "intangible property", notes, money in the bank, credits, shares of stock, etc. were so commonly concealed that, although they constitute a large and valuable part of the personal property of the state, they have been exempted from taxation as general property and are taxed at a uniform rate fixed by law at much less than the average general property rate. This has been done in the hope of bringing some of the intangible property out of concealment.

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In the opinion of the Kansas Tax Code Commission, a basic cause of these and other problems of assessment in Kansas is the fact that we do not really have a county assessment unit. Our assessment system is based upon the township, and the deputy assessors, outside the cities, are not really appointive officials. Assessment might be said to be an ex officio function of the township trustees. The inevitable result of this decentralization is inequality of assessment. Local officials are likely to be influenced by local considerations. Even where the assessors are scrupulously conscientious in their work, there is almost sure to be a variety of standards in the assessment of the county. Local pressure may be brought to bear on the deputy assessors to keep the valuation of the township down, so that it may not bear too large a share of the county tax. Within

the township a locally chosen assessor is more likely to favor certain properties than would someone representing a larger assessment unit.⁴⁰

County Equalization of Assessment

As a means of correcting inequalities of assessment, the county board of commissioners is designated as ex officio county board of tax equalization. The county clerk is ex officio clerk of the board of equalization.⁴¹ The clerk is required to publish notices of the meeting of the board of equalization for three weeks, beginning the last week in April of each year. On the third Monday of May in each year the meeting of the board is held in the office of the county clerk.⁴²

At this meeting the board is authorized to raise or lower the valuation of any property which it believes to have been improperly assessed. In the year of the quadrennial real property assessment, the valuations of real property may also be subject to review by the county board of equalization.⁴³ In addition to this power to change individual assessments, the board may raise or lower the total assessment of any district or of any class of property within a district. Where the valuation of any property is raised, except as a part of an entire class of property, the owner must be notified by the county clerk so that he may attend the meeting of the board at which his property is being considered.⁴⁴ Any person may enter a complaint against the assessment of his property, the complaint

to be heard by the county board.⁴⁵

The meeting of the board may last ten days, with such adjournments within that period as the board may decide. At the end of this ten day session the board is required to adjourn to some date at least ten days distant at which time the hearings on complaints of persons who have been notified by the county clerk of impending increases in their valuations are held. This second session may last no more than three days, after which the board must adjourn sine die. The final adjournment of the board must be taken on or before the twentieth of June, or June nineteenth, if the twentieth falls on Sunday.⁴⁶ The assessment rolls, as equalized by the county board, must be prepared by the county clerk and sent to the state tax commission on or before July 1.⁴⁷

Equalization of Assessment by the State Tax Commission

An important function of the state tax commission is to act as state board of equalization. In this capacity the commission has power to raise or lower valuations so as to equalize the assessment between properties, or between counties, or townships, or other districts, and between different classes of property.⁴⁸ Any person who feels aggrieved by the action of a county board of equalization, within thirty days, may appeal the decision of that board to the state board of equalization. The commission must meet at its office on the second Wednesday in July to perform the work of equalization.⁴⁹ At this meeting also the state tax levy is apportioned by the commission among

the various counties in proportion to taxable valuation.⁵⁰ After the state board of equalization has completed its work, the tax commission is required to certify the corrected assessment back to the various counties to serve as a basis for all general property tax levies.⁵¹

Any time before November 1, the county clerk may correct a clerical error in the assessment rolls. The correction of certain of these errors, such as the inclusion on the rolls of tax exempt property must be approved by the state tax commission.⁵² After November 1, no such errors can be corrected except upon order of the county board of commissioners, and its power ceases on February 1.⁵³ After February 1, and before June 20 the tax commission may order such correction.⁵⁴ The power to make these corrections includes the power to order the refund of taxes that have been wrongly collected.⁵⁵ Any time before August 1 of the year following an assessment, the tax commission may investigate a grievance, and, at its discretion, correct an error in the assessment.⁵⁶ These opportunities for redress of grievance protect the property owners, but their use, is, of course, the exception. Ordinarily the process of assessment is completed for the year by the certification of the assessment rolls from the state tax commission back to the county clerks for the use of the various local taxing bodies.

The centralizing force of the state and local review of assessment should not be underestimated. The work,

especially of the state board of tax equalization, has been of great importance in establishing and maintaining proper valuations, and in eliminating inequalities of assessment. The weaknesses of local assessment have not been entirely eliminated, but the work of the tax commission has nevertheless had a very salutary effect. This is well illustrated by the experience of the commission in the first year of its existence. The assessment of 1908 was the first one reviewed by the tax commission, and a comparison of the assessment of 1908 with that of 1907 shows the effectiveness of the commission's work. The total property valuation of the state in 1907 was \$425,281,214. In 1908, through the work of the state board of equalization, the valuation had been raised to \$2,451,560,397, an increase of 476.4 per cent.⁵⁷ But the effect of the state review of assessment was not alone to increase valuations. We quote from the first biennial report of the state tax commission.

"Inequalities were everywhere present under the old plan. In one township of that county one piece of farm land was assessed at 3 1/3 per cent of the sale consideration. In the same year, in the same township, another farm was assessed at 80 per cent of the price at which it was sold. In the same county variations in assessment ranged from 2 1/2 per cent of the real value to 76 per cent. Examples of somewhat similar nature could be given for many other counties."⁵⁸

Since 1908 the work of the tax commission in correcting inequalities and in holding up valuations to a proper level has not been as spectacular as it was in the first year, but it has been just as important. The effectiveness of the county board in assessment equalization

is less easy to demonstrate, and it of course varies from county to county and from time to time. It is perhaps significant in this connection to note that the state tax code commission felt sufficient confidence in the county as an assessment district to recommend in 1929 that it be made
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the basic assessment unit.

The Collection of Taxes

The collection of the general property tax is a function of the county treasurer. Here, as in the matter of assessment, the county acts as agent for the other taxing districts of the state. After the corrected assessment roll has been returned by the state tax commission to the county, it becomes the duty of the county clerk to prepare the county tax rolls, entering the names of the owners of real and personal property, together with a description of the property and the valuation. When all the various levies from the county board, the school districts, the townships, etc. have been certified to the county clerk, he must determine the amount of tax each person on the rolls must pay. With this information added to the tax rolls, they are then certified by the clerk to the county treasurer for
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the collection of taxes.

To the tax rolls as he receives them from the clerk, the treasurer adds a description of all properties on which back taxes or penalties are owing, and advertises in a newspaper circulating in his county, for two consecutive weeks, the amount of tax levied in the county for state, county,

city and other purposes, per \$100 valuation.⁶¹

On or before the twentieth of December of each year the first half of the general property tax is due, and all of the tax may be paid.⁶² On or before the twentieth of the following June the remainder of the tax is due. If either half is unpaid at the time it is due, a penalty of 5 per cent shall be added to it, and a description of the property on which the tax is overdue is entered upon the tax books by the county clerk. This entry must be made before January 1 on the first half the tax, and July 1 on the second half.⁶³

The treasurer is authorized to invoke the police power of the county to collect over-due taxes. The process in the case of taxes on personal property is relatively simple. The treasurer first sends a written notice to the post-office address of the delinquent tax-payer notifying him of his tax and penalty. This must be done between the first and fifteenth days of January for the first half of the tax, and of July for the second half.⁶⁴ Should such tax remain unpaid thirty days after the mailing of a notice, the treasurer issues a tax warrant to the sheriff for the collection of the tax by execution upon the property of the defaulter.⁶⁵ Tax warrants must be returned by the sheriff within sixty days except in counties where there are more than 5,000 issued, in which case an extra sixty days is allowed.⁶⁶

The sheriff, in executing a tax warrant, is authorized to charge such fees as he does for other executions.⁶⁷ Warrants cannot be issued against persons whose

poverty or infirmities are such as to prevent them from contributing to the public charge. Persons wishing to claim such exemptions must file a poverty or infirmity affidavit with the county treasurer.⁶⁸ If any tax warrant is returned unsatisfied, the county treasurer, if he believes the defaulter has property which cannot be reached by an ordinary tax warrant, may have the clerk of the district court enter an abstract of the delinquent tax upon the register of the court where it remains as a judgment and serves as a lien against real property.⁶⁹

The process of collecting delinquent real property taxes is much more involved than is the collection method outlined above for personal property. The first step in the collection of delinquent real property taxes is taken by the county treasurer, who, between the first and tenth of July publishes a notice of the sale of delinquent properties to be held on the first Tuesday of September. This notice must appear in a newspaper of the county each week for four weeks.⁷⁰ On the date set in the notice the treasurer proceeds to offer the delinquent properties for sale, continuing the sale from day to day, if necessary. Sale must be made to the person offering to take the smallest portion off the north side of the tract of land in return for payment of all taxes and penalties.⁷¹ If no such offer is made, then the land is sold to the person who offers most for the entire tract.⁷² Payment must be made within twenty-four hours. If no one will buy the land, the county treasurer

must bid it in, in the name of the county.⁷³ Land thus bid in is entered upon the tax rolls of the county as if it had been sold to some other person. Taxes are levied against it and they become a lien against the property.⁷⁴ All papers concerning these transactions must be filed by the county treasurer with the county clerk.⁷⁵ Lands not sold at the sale in September may again be offered for sale by the county treasurer on the fourth Monday of October.⁷⁶ Purchasers of land at such sales do not receive deeds, but receive only tax certificates.⁷⁷

Those counties which choose may, through the action of their county boards, adopt the provisions of an act passed in 1921. Under this act no land is offered for sale to the general public because of a delinquency in tax payment. Instead the land is sold directly to the county at the September sale without bids being heard from any individuals. Land thus bid in is held by the county for a period of three years, after which it may be sold for the amount of taxes and penalties that have accumulated against it. At any time during the three years that the county holds this land the owner or his heirs, assigns, or agents may redeem the land by paying the taxes and charges against it.⁷⁸

Land sold under the general law governing delinquent taxes can be redeemed within three years of the date of sale by the owner of the land, his heirs, assigns or agents. To redeem the land he must pay the county treasurer the amount for which the land was sold plus all subsequent taxes and charges, with an interest at 15 per cent. Upon such pay-

ment by the owner, he is issued a tax redemption certificate by the county treasurer, who then pays the proper share of the redemption money to the person who bid in the land at the tax sale. At the time of redemption, the tax certificate issued to the buyer at the time of the tax sale is cancelled.⁷⁹

When land has been bid in by the county and held for a period of three years, it may be offered for sale. If no buyer appears, the county may, at the discretion of the county board, offer to compromise the taxes and charges held against the land, and sell it to the owner for less than the total charges. Where such compromise is effected, the amount of purchase money thus received must be apportioned to the various tax funds of the county and other districts, in proportion to the amount of back taxes that were owing to the funds.⁸⁰ Lands being held by the county after having been bid in at a tax sale may be leased by the county for periods of one year at a time, until the charges against the land are paid. If such land is redeemed while under lease, the owner may not recover possession until after the lease has expired.⁸¹

If any land sold for taxes has not been redeemed at the expiration of three years, the county clerk must issue a tax deed for the land to the purchaser, upon receipt of the tax certificate which was issued at the time of the tax sale.⁸² This deed must be recorded within six months of the date on which it was issued.⁸³ Any suit against a tax purchaser to set aside the tax deed must be commenced within five years after the registration of the deed.⁸⁴ Each year, the county

treasurer is required to publish a list of the properties which have been sold for taxes and on which the redemption period is about to expire. This publication must be made at least four weeks before the expiration of the redemption period.⁸⁵

Lands which have been bid in by the county at a tax sale are disposed of by the process of foreclosure and sale. Three and one-fourth years after the date of bidding in such land, the county board orders the county attorney to commence an action of foreclosure in the district court of the county. The hearing of such cases takes precedence over all except criminal cases. When judgment by the court is in favor of the county the clerk of the district court orders the sheriff of the county to announce a sale of such land. This order must issue after ten days after the rendering of the judgment of the court. The sheriff then advertises for a period of thirty days a sale to be held not less than thirty days from the date of the first appearance of the advertisement. At any time after judgment is rendered and before the sale is held, the owner of the land may redeem his property by paying the judgment of the court, with interest at twelve per cent, plus any subsequent taxes or charges.⁸⁶

The "Intangibles" Tax and the Mortgage Registration Fee

Supplementing the general property tax as sources of county revenue are two taxes upon so-called "intangible" property. The first of these applies to moneys and credits, to actual cash in hand or in the bank, and to all evidences

of ownership of property, such as notes, bonds, etc., except notes secured by mortgages on real estate.⁸⁷ These moneys and credits are assessed at the same time and in the same way as other property, but they are, by law, taxed at only 5 mills on the dollar of valuation.⁸⁸ Experience has shown that intangible property, when taxed at the general property rate, which is often greater than money will earn when held at interest in the bank, tends to disappear at assessment time. Much of it is sent outside the state to avoid assessment, and much of the rest simply is not listed by the owners. The comparatively low tax rate of five mills has brought a larger amount of intangible property to the tax rolls than appeared under the general property tax. Professor J. P. Jensen, in a study of the Kansas tax on intangibles, estimated that the passage of this law increased the amount of intangible property returned by the assessors by more than two hundred per cent.⁸⁹

Notes secured by mortgages upon real estate are excluded from taxation under the intangible property law and are taxed under a system of mortgage registration. Every person seeking to register any mortgage or other instrument constituting a lien against real estate, is required to pay the register of deeds a fee of 25 cents for each \$100 debt represented by the mortgage, in addition to the regular fees for registering the mortgage. The payment of this fee at the time of registration exempts the mortgage from further taxation in the state of Kansas.⁹⁰

Of the income from the intangible property tax, the county receives one-sixth. This amounted in 1927 to \$127,954.66, or only about .7 per cent of the amount the county derived from the general property tax in the same year.⁹¹ Of the mortgage registration fee, the county receives half. In 1927 this amounted to \$241,007.56, or about 1.3 per cent of the amount derived from the property tax.⁹² These taxes are not entirely negligible, of course, but it is clear that they are not very important as sources of county revenue.

Fees as a Source of County Revenue

Fees charged for licenses and for services rendered by the various county officers constitute another source of county revenue. The county clerk issues cigarette licenses⁹³ and, in certain counties, dance hall licenses.⁹⁴ He also issues hunting licenses, but fees for such licenses are paid to the state treasury.⁹⁵ In addition he renders a variety of services such as the issuance of tax deeds, the recording of marks and brands, recording reports and papers, receiving the filing papers of candidates in primary elections, for which fees are charged.⁹⁶ More than one-sixth of the fees collected in Douglas county in 1931, a year in which there was no primary election, were collected by the county clerk.

The probate judge, for the probating of wills and for other similar services collects fees, which, in Douglas county in 1931, amounted to \$2,831, almost a fourth of the fees of the county. The clerk of the district court, for

the filing of cases and for other services connected with the work of the court, received fees amounting to nearly \$2,300 in Douglas county in 1931. The register of deeds for the work of registering legal instruments, deeds, mortgages, etc. collected a larger amount of fees than any other county officer, with nearly \$3,000. The sheriff's fees for serving legal papers, such as summonses, subpoenas, executions, etc. were \$812. The county attorney collected only \$195, the county treasurer, exclusive of the automobile license fee, \$191.40. For each motor vehicle license issued, the county is allowed to keep 10 cents.⁹⁷ In Douglas county in 1931, this amounted to \$840, and it was collected by the county treasurer.⁹⁸

These figures for Douglas county in 1931 showing fee collections of only \$12,000 out of nearly \$290,000 county expenditures are probably fairly representative of the counties in general. Fees are supposed to pay for the services for which they are charged, but it is clear from the limited income they produce that they do not. On this subject the state tax code commission in 1929 reported,

"While it is true that the salaries of county officials, generally, have not been materially increased in recent years, yet it is equally true that the fees charged in their respective offices for ministerial services performed for the public have remained stationary for many years, and in most instances return to the county considerably less than is required to be paid in salaries alone. The fees to be charged, particularly in the offices of the register of deeds, clerk of the court, and probate judge, should bear a direct relation to the cost of maintaining the office."⁹⁹

State Grants to Counties

Some revenue is derived by the counties from the state treasury. Of the cigarette stamp tax the county receives five per cent of the amount sold in the county.¹⁰⁰ This is in addition to the entire cigarette license fee which is kept by the county. The county receives five per cent of the inheritance taxes collected in the state. The state highway commission is required by statute to grant the amount of \$900,000 quarterly to the counties for the support of county and township roads. This must be distributed to the counties as follows: 40 per cent to the counties equally, and sixty per cent on the basis of the assessed valuation of the preceding year. Within the county this money may be used at the discretion of the county board, but in those counties which do not operate under the county road unit plan, not less than 50 per cent of this fund must be used to maintain township roads and bridges.¹⁰¹ An additional \$700,000 quarterly must be distributed to the counties on the same basis as the above, to be used in the counties by the state highway commission to reimburse the county and benefit districts within the county for money spent in building or maintaining state highways.¹⁰² Certain special functions, such as the farm bureaus in those counties which have them, receive some funds from the state, but the amount is not large, and since it is granted for a special purpose,¹⁰³ it is hardly a grant to the county.

Sale of Materials and Services

Counties which do not operate under the county road unit plan frequently derive a substantial income from the sale of materials and services to the townships. In Douglas county, for example, in 1931 the county road fund received \$16,934.90 from this source, and the bridge fund \$2,355.43.¹⁰⁴ Used road-working machinery, road materials, such as sand or gravel, and even services, such as keeping up sections of township roads, furnish the basis for this sort of income. County institutions, such as the county poor farm, may furnish a slight revenue from products made or raised by the institution. For the care of the insane in county institutions the county also receives some income from the state and from relatives of the insane persons.¹⁰⁵

The Receipt and Custody of County Funds

The treasurer is not only the collector of taxes in the county, but the statutes also provide that, "It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatsoever source they may be derived, and all other moneys which are by law directed to be paid to him."¹⁰⁶ This includes not only the taxes of the county but also of the other units of government, including special assessments. Fees collected by the various county officers are paid to the treasurer by them. Filing fees of primary candidates, license fees, and, in general, all the county revenues are paid to the county treasurer.

The county treasurer is custodian of the county funds,

but he is required by law to make daily deposits of the county's receipts in the county bank of deposit. One or more banks must be designated by the county board as county depositories, and must agree to pay interest on the average daily deposits of the county at a rate agreed upon in advance. This rate must not be less than 2 per cent. Banks so chosen as county depositories must give a bond signed by some responsible person or surety company. No bank in which the county treasurer or any county commissioner is interested pecuniarily may be designated as a depository. A bank within the county must be designated unless none is able or willing to meet the requirements of the law, in which case any bank in the state which meets the requirements may be named to receive the county funds. In any case, the bond of the bank, if a personal one, must amount to double the largest approximate amount of county funds which will be on deposit in the bank at one time. If the bond is signed by a surety company, it need be only half that large. Not more than one-half the amount of the bond may be subscribed by the officers of the bank. Depository banks are required to make monthly statements of the county account to the county clerk.

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Every effort is made through stringent laws against embezzlement by county officers, to protect the county funds. These provisions are strengthened by the fact that the treasurer, clerk, commissioners and other county officials are liable under their bonds for the proper care of public

funds. Supplementing these safeguards, and really constituting the greatest safeguard of all is the system of auditing and accounting that the law provides.

In the first place, the county treasurer is required by law to keep a full and correct record of all the various funds in his custody. These records must be kept open for inspection at all times by the members of the county board and by other county and state officers. At a meeting of the county board in October the treasurer is required to make a full settlement of all his accounts with the board, and to present all vouchers, orders, receipts and records for approval of the board.¹⁰⁸ This settlement must include a settlement of the financial affairs of every city, township, school district or other municipal organization within the county.¹⁰⁹ In addition, a quarterly statement of the money in these various funds must be issued by the treasurer showing separately the sinking funds and other funds of each district.¹¹⁰ This statement must be published in the official county paper at least once, and a copy must be posted inside the door of the treasurer's office. A penalty of \$25 per day for each day he refuses or neglects to publish this statement may be recovered from the treasurer by suit in the name of the county board.¹¹¹

At any time the county board may order the probate judge of the county, together with two citizens, residents and taxpayers of the county chosen by the board, to conduct a special audit of the county treasurer's books. Compen-

sation of \$2 per day must be paid the judge and the citizens for this service. The probate judge must report the results of this audit to the county clerk who notifies the board. If a deficiency in the accounts of the treasurer is disclosed, the board may take whatever action it deems necessary, including suspending or removing the treasurer, and choosing someone to complete his term of office. Any probate judge who refuses to conduct such an audit is liable to a penalty of \$500 for each quarter that he refuses or neglects to do so. This penalty is recoverable in a suit at law in the name of the county board.¹¹²

A most important accounting agency is the county clerk's office, which is designed to keep a check upon the other county offices, particularly the treasurer's office. The statutes provide in great detail a system of accounting that the county clerk must use in keeping a record of the receipts and expenditures of the county and of all transactions with different county, township and other district officers.¹¹³ A check of the bank deposits of the county, as they are made by the treasurer, must be kept by the clerk. Receipts for taxes or other money paid to the county treasurer must not only be signed by him but must also be countersigned by the county clerk, and a duplicate filed in the clerk's office. Receipts for money paid to other officers must commonly be signed by the county clerk and a duplicate filed in his office. It is, in fact, the intention of the law that the two offices of clerk and treasurer shall check each other in practically all of the

important financial functions of the county. As we shall see this is true of the disbursement of money as well as of its collection.

It seems extremely likely that this double-check of accounts between the clerk's and treasurer's offices is more cumbersome than effective. One county clerk, discussing this question, stated that if a county treasurer really wished to be dishonest there was very little the clerk could do to prevent it; whereas, the system of checks the law provides, if strictly adhered to, would almost double the clerical work of the two offices. In actual practice, this man said, county clerks do not countersign receipts. Instead, tax receipts are issued by the county treasurer with a facsimile signature of the county clerk printed upon them. The clerk maintains a check upon receipts, but it is not the independent check that the law seems to intend. If the letter of the law were observed, each person, upon paying money to the county treasurer would be compelled to take a receipt from him, and give it to the county clerk to have it entered upon a separate set of books and countersigned. The added work and delay which that would entail, especially at tax-paying time, is avoided in the manner described.¹¹⁴

In counties where a county auditor has been appointed, he furnishes an additional check upon county funds. In counties of from 45,000 to 70,000 population the auditor is required to make a detailed examination of the treasurer's records every two months and to report the results of the

examination to the county board.¹¹⁵ In counties of more than 70,000 the auditor is authorized to make a quarterly examination of the treasurer's accounts and of his quarterly settlement with the county board. At these examinations the treasurer must make good all notes, returned checks, assignments and other obligations held in lieu of cash.¹¹⁷ He is held under his bond for the full amount of cash in the cash account.¹¹⁸ The clerk of the district court and the sheriff are required to make quarterly reports to the auditor, who is required to check their books against their reports.¹¹⁹

As a still further safe-guard to the county funds, the law specifically prohibits any person holding the office of sheriff, clerk of the district court, probate judge, county attorney, county clerk, or deputy to any of these officers, or county commissioner, from holding the office of county treasurer.¹²⁰ The county board is prohibited from appointing any assistant or deputy to the treasurer to act with the probate judge as special examiner of the treasurer's accounts.¹²¹

Disbursement of County Funds

Disbursement of county funds is a joint activity of the county board, the county clerk, the treasurer, and the auditor or county attorney. No county funds may be paid out except upon order of the county board, signed by the president of the board and attested by the county clerk.¹²² To collect a bill from the county, a person must first

present it in itemized form to the county clerk.¹²³ Once each month these bills are listed and prepared for presentation to the county board. In counties in which there is a county auditor, however, he must first pass upon them. In such counties, the accumulated bills, on the first Monday of each month are sent by the clerk to the auditor. He is allowed a month in which to pass upon them. He is required to check the validity of the claim against the county, the law under which it is presented, and the legality of the contract, if any, under which the claim arose. Within a month the auditor must return all bills to the clerk, with his decision marked upon them, together with the amount allowed and the law or contract under which they were allowed. With every bill not allowed or partially allowed, he must list his reasons for his decision. Bills which have been thus acted upon by the auditor are then sent to the county board.¹²⁴

The county board is forbidden to raise any amount allowed by the auditor, or to allow any bill he has not passed.¹²⁵ They may, however, refuse to allow any bill that the auditor has allowed. In counties where there is no auditor, the county attorney meets with the board when it is allowing bills and passes upon the legality of all claims presented for payment. Bills not accepted by the county attorney may not be allowed by the board.¹²⁶ When a bill is allowed, an order for its payment is issued, signed by the president of the board, attested by the county clerk, and presented to the treasurer for payment. The board,

after each regular and special meeting, must publish a list¹²⁷ of the bills allowed at the meeting.

The treasurer may put out no money except upon receipt of a warrant properly signed by the chairman of the county board and attested by the county clerk. When there is not sufficient money in the treasury to pay a warrant upon presentation, the treasurer must endorse it upon the back, and mark the date upon it. From the date of its presentation until it is paid, it bears interest.¹²⁸ From time to time the treasurer must publish a notice that funds are on hand to pay warrants, and call in the outstanding warrants in the order of the number given them at their first presentation.¹²⁹ If a warrant thus called in is not presented, it ceases to bear interest from the time notice was published in the paper.¹³⁰ Money paid by the county treasurer to the funds of other units of government, as their share of tax receipts, shall be paid upon orders drawn by the county clerk.¹³¹

The treasurer must receive a receipt in duplicate for all money paid out and must file the duplicate copy with the county clerk.¹³² The clerk must also keep a record of all transactions with the different taxing districts within the county.¹³³ Warrants which after being issued by the board remain uncalled for in the clerk's office for more than three years, are returned to the county board and cancelled.¹³⁴ County officers are forbidden to buy county warrants or other evidences of county indebtedness at less than face value. In each settlement the treasurer is required to take oath that he and his deputies have not

done so.¹³⁵ The county board, at the July meeting, or oftener, is required to check the county orders which have been paid by the treasurer with the record of orders issued, kept by the county clerk, and to prepare a list of the orders paid.¹³⁶

County Budgets

The county board, as has been stated, is required to prepare an annual financial statement of the county, including a detailed statement of county indebtedness, county receipts and expenditures for the preceding year, and a statement of the estimated expenditures upon which the levies for the ensuing year were based.¹³⁷ In addition the county clerk is required to prepare a detailed financial statement of the county's revenues, expenditures and indebtedness, to be sent to the state auditor in July of each year.¹³⁸ Neither of these statements is really a budget, although the annual statement of the county board is sometimes spoken of as the annual budget. It is certainly not a budget in the sense of a detailed financial plan which governs the expenditures of the taxing body.

County Borrowing

The general power of the county to borrow money is vested in the county board, with the express limitation that all loans must be approved by a vote of the electorate.¹³⁹ Occasionally special laws temporarily setting aside this restriction with regard to a certain county or counties,¹⁴⁰ is passed, but commonly borrowing must be approved by the people.

In 1922 the total indebtedness of Kansas counties was \$21,998,000, as compared with the total of \$123,392,000 for the state government and all of its subdivisions. County indebtedness represented less than one-fifth of the total debt of the state. Even so, the county debt of 1922 was a 125 per cent increase over the county debt in 1912, which was \$9,777,000. The total state debt of 1922 was 133 per cent larger than in 1912, when the total debt was \$52,868,000. County debts in 1912 were about 24 per cent less than the county debts of 1902, but the total state debt was nearly 48 per cent larger than the total for 1902. These figures indicate that while county indebtedness has decreased since the beginning of this century in relation to the total state debt, it has nevertheless actually increased by nearly 100 per cent over the county debt of 1902.

CHAPTER VII

THE COUNTY AND PUBLIC WORKS

The Importance of County Road Work

The principal public work of the county is the building and maintenance of roads and bridges. In fact, if expenditure is any measure of importance, the construction of roads and bridges is the most important single function of the county government. In 1929, for example, nearly eight and one-half million dollars went into the county road funds of the counties from their tax levies.¹ This was approximately 40 per cent of the total county tax levied in the state that year.² The general county fund, with all the various officers and functions it supports, received very little more than roads and bridges. But those figures alone do not measure the importance of the county in road construction and maintenance. In addition to the county road and bridge funds derived from county taxes, it will be shown that the counties receive an additional three and a half million dollars annually from the state highway fund, and they exercise a measure of control over the township road expenditures which in 1929 amounted to over five million dollars.³ This means that the total expenditure for roads

and bridges directly or indirectly under county control amounts ordinarily to more than the expenditures of the county and township governments for all other purposes combined.

The reason for these comparatively large county and township expenditures for road and bridge purposes lies in the fact that most of the road building and maintenance of the state is the work of these local units. A few years ago the road work of the county was even more important than it is today, for it is only very recently that the responsibility and authority of the state over highway construction have been definitely established. More than 123,000 miles of the 132,536 miles of roads in the state of Kansas are under county or township control. The remaining roads of the state, comprising between eight and nine thousand miles of the most important trunk roads, constitute the state highway system.⁴ Until 1929, these roads, too, were built by the counties, subject to a limited supervision by the highway commission.

The State Highway System

The present state highway act went into effect on April 1, 1929.⁵ Some understanding of its provisions is necessary to an understanding of the county's present position with regard to road construction. At the head of the state system is the highway commission, composed of one member from each of the six districts into which the state is divided. These men are appointed by the gov-

ernor for two-year terms, and they receive a salary of \$10 per day, with the provision that they may not receive more than \$1,500 salary in a year. The active supervision of the highway system is the work of a director of highways who is appointed by the commission. He, in turn, appoints a state highway engineer and the many other employees of the highway department.⁶

The highway commission is given full control of the state highway system, with authority to designate, lay out, alter, or vacate state highways in every county in the state, with the restriction that the total mileage of the state highway system must not exceed 8,690 miles. The interests of the individual counties are protected by the requirement that the total mileage of state highways in any county must not be less than the total of the north to south and east to west diameters of the county, and with the further requirement that the county seat and the principal cities and market places in every county must be connected by the state highway system.⁷

The highway commission's control over the state highways includes the power to let contracts for their construction, to employ men and buy materials and equipment for their maintenance, to build bridges and culverts, to buy land necessary to the road-building program, or to acquire it through the power of eminent domain, to mark highways, and to exercise any other needful power over them. To carry on this work the highway commission is given the right to expend, subject to certain limitations, the state

highway fund which amounts to more than twenty million dollars annually. In the year ending June 30, 1930, the disbursements of the commission amounted to \$21,202,435.29.⁸

The state highway fund is derived principally from three sources, the state gasoline tax, the state motor vehicle license tax, and federal aid. Of course the income from these sources varies from year to year, but the figures for 1929-1930 may be taken as representative at least of the relative amounts derived from each source. In the year ending June 30, 1930 the highway fund receipts from these sources were as follows:

1. The state gasoline tax - - - - -	\$10,609,782.55
2. The state motor vehicle license fee - - - - -	5,975,566.20
3. Federal aid - - - - -	2,518,562.75

An unexpended balance from the preceding year of nearly four million dollars, plus half a million dollars from several minor sources, brought the highway fund for the year to a total of \$23,358,418.83.⁹

Before the enactment of the present highway law the actual construction and maintenance work of the state highway system was done by the various county road crews, and the disbursement of this large state highway fund was chiefly a county prerogative.¹⁰ In the 1929 law the counties managed to save a share of this fund for use on the county roads. This was accomplished by means of a provision which requires that the sum of \$900,000 quarterly be distributed from the highway fund to the various county and township

road and bridge funds.¹¹ The commission is also required to distribute \$700,000 quarterly to the counties to use for the following purposes: (1) To pay benefit district assessments and reimburse taxpayers for benefit district assessments already paid, where such assessments were made for the purpose of constructing state highways; (2) To pay outstanding county warrants issued for construction or maintenance of state highways; (3) To maintain that portion of the highway system within the respective counties; (4) To construct new highways.¹²

The purpose of the first of these provisions is to give the counties and townships a share in the two motor vehicle taxes, the gasoline and license taxes, for use in maintaining the minor roads of the state. The second provision is a device for repaying those counties and districts which undertook the burden of beginning the construction of hard-surface roads, under the benefit district system. The state highway act recognized the state-wide importance of the principal highways, and it was deemed only fair that it should also recognize the responsibility of the state for the construction even of those state highways which had already been built. On April 1, 1929, the various county boards were required to deliver to the highway commission all road equipment, machinery and materials which had been purchased with money from the state and county road fund for use on the state highways.¹³ At the same time the commission assumed all the rights and liabilities of the counties for all construction and maintenance, and for all contracts

relating to the state highway system.

County Roads

The road work of the county is under the active supervision of the county engineer, an officer appointed by the county board, with the approval of the state highway commission. He is subject to dismissal by the county board for cause or by the state highway commission for incompetency. Every county is required to appoint an engineer, although provision is made whereby two or more counties, with the approval of the highway commission, may employ the same engineer. Such counties must form an engineer district which may include not more than six counties and not more than \$100,000,000 of taxable valuation. No district may be altered within a year of its formation. County engineers must give bond to the amount of \$2,500 payable to the county, or to the governor of the state, when they serve more than one county.¹⁴ Compensation of the county engineer is by salary fixed by the county board, but a varying scale of minimum salaries is set by statute. These minimums range from \$1,200 per year in counties of 10,000 population or less to \$2,000 per year in counties of more than 30,000 population. The same schedule of salaries applies to engineers employed by special engineer districts. In addition, the county or district is required to pay the necessary expenses of the engineer.¹⁵

The law provides that all roads in the state not included in the state highway system are county or township

roads.¹⁶ The law also provides that the work of designating which roads shall be county and which township roads shall be done by the county board and the county engineer. The principal roads, connecting the chief cities and market centers of the county, must be designated as county roads, and the remainder as township roads. Counties having a total of 1,000 miles of public road must designate not less than 50 miles, nor more than 150 miles, as county highways. In counties having more than 1,000 miles of public roads, not less than 10 per cent nor more than 15 per cent must be designated as county highways. In counties having more than \$50,000 valuation, not less than 100 miles, nor more than 25 per cent of the road mileage in the county must be designated as county roads.¹⁷ County roads lying partly within and partly without cities and connecting with the county highway system may be designated as county roads and supported either by the county alone or in conjunction with the city.¹⁸

Once a county road system has thus been designated, the county engineer is required to make a map of the system and submit it to the county board. After the county board has approved the map, a copy must be sent to the state highway engineer who shall examine it and check it with regard to such factors as the volume of traffic, the continuity of county roads, and the cost of construction and maintenance. The state highway engineer must make such recommendations for changes in the county highway system as he shall deem necessary and return the map to

the county. The county board must authorize the county engineer to correct the map in accordance with the state highway engineer's recommendations, and must then declare the corrected system to be the county road system. After the system has been adopted, the engineer must make surveys of the system and must prepare plans for grading and for the construction of culverts, bridges, and other improvements. These plans, also, must be approved by the state highway commission before construction work is begun by the county.¹⁹

After the county road system has been established, it is the duty of the county board to see that the county roads are maintained in good condition. To finance this work, as well as to pay for the construction of roads, the county is required to levy a tax of from .25 to 1.5 mills per dollar of valuation each year. The money so raised is called the county road fund. The board may levy a road tax in excess of the limitation by securing the approval of a majority of the electors of the county at a general election. The board is expressly forbidden to use the county road fund for the construction of bridges and culverts.²⁰

The work of constructing and maintaining county roads may be done by day-labor, directly under the supervision of the county engineer, or it may be done by contract. If the day labor system is used the engineer is required to keep an accurate, itemized account of all

expenditures for labor and materials, and to file a sworn statement of this account with the county clerk at the end or each month, and a final statement when the work is completed.²¹ Contracts for county road work to cost more than \$500, according to estimates prepared in advance by the county engineer, must be let after fair and open competition at a public letting of the bids. The county clerk must advertise the bids and must keep a copy of the specifications on file in his office for at least twenty days in advance of the letting of the contract. Bids must be submitted on forms furnished by the county, and must be accompanied by a certified check for 5 per cent of the amount of the bid as a guarantee that the contractor will fulfill the terms of the contract if awarded it. The contract must be let to the lowest responsible bidder. The successful contractor must file a bond equal to the amount of his bid. He may be paid as the work progresses, but not more than 90 per cent of the contract price may be paid him until after the work has been finally accepted by the county board.²² Ordinary bills for supplies used in road work must be approved by the county engineer before they may be allowed by the county board.²³

Township Roads

Township roads are under the control of the township board of highway commissioners which is composed of the township trustee, the township clerk, and the township treasurer. This board is required to meet regularly on

the last Monday in March, June, September, and December, and may hold special meetings at the call of the chairman or any two members. The board is required to appoint, with the approval of the county engineer, a competent road overseer to take active charge of the road work of the township. With the approval of the county engineer the overseer may appoint one or more assistants. Both overseer and assistants hold office at the pleasure of the township board, and work under the supervision of the county engineer.²⁴

The salary of the overseer and his assistants is fixed by the township board. The members of the board receive for their work the sum of \$3.50 per day, each, for time devoted to road work. This may not exceed \$80 per year for each commissioner except in townships having from 5,000 to 8,000 population and a valuation of more than \$7,000,000, where the annual salary of the road commissioners may not exceed \$200 each for the trustee and clerk, and \$100 for the treasurer.²⁵

All road work must be done at the proper time and in accordance with the requirements of the state highway commission.²⁶ Township work may be done directly or by contract, under restrictions similar to those imposed upon the county in its road work. For the purpose of financing the township road work, the township board of highway commissioners is required to certify to the county board of commissioners on the last Saturday in July, the amount determined by them to be necessary for the road work of

the township in the ensuing year. The county board, then, at the time of levying county taxes must levy a tax in the township sufficient to raise that amount, if possible, but in no case more than three mills. All property within cities must be excluded from this levy. A tax in excess of three mills may be levied with the approval of a majority of the voters of the township voting at a general or special election.²⁷ This tax is collected, as is all the rest of the property tax, by the county treasurer, is paid by him to the township treasurer, and is appropriated by the township board of highway commissioners. Township road funds also derive a limited income from the poll tax which all townships and all cities except those of the first class are required to collect from all male residents between the ages of twenty-one and fifty who are not public charges. This tax is set by law at three dollars per year and it may be paid in money or in labor on the roads at the rate of \$1.50 per day for a man alone or \$3.00 per day for a man and a team.²⁸

The township road overseers are required to make monthly reports to the township board. The township clerk must make an itemized report to the county engineer of all road construction and other road work in the county, after each meeting of the township highway board. In his annual report to the county board, made in October, the county engineer must include a report of the road work of the townships.²⁹

Laws Applying to Both County and Township Roads

The purpose of the road laws is naturally to make the county and township road systems supplement each other. For that reason the county engineer is given such power of supervision over the township roads as has been noted. In addition, he is authorized to call a one-day meeting of the road officers of the county and the townships in the county each November and February.³⁰ The purpose of these meetings is to discuss the road work of the county, to plan improvements, and to devise means of standardizing work.

The close relationship between the county and township road systems is shown even more clearly in certain statutory requirements which apply to both the township and the county roads. For example, in planning the county highway system, including the township roads, the county board is required, wherever practicable, to eliminate all grade crossings by paralleling the railroad, relocating the highway, or building a viaduct or an underpass. The expense of eliminating grade crossings must be divided between the county and the railroad company, on such terms as the highway commission shall decide. Where it is decided to relocate or alter a highway to eliminate a grade crossing the county may purchase such land as is necessary, or, if the owner refuses to sell, the county may use the power of eminent domain. If the relocation of a road is decided upon to eliminate a grade crossing, the railroad company must pay one-half to three-fourths of the expense.³¹

The maintenance work of a large part of the county and township road system in most counties consists chiefly of dragging. The law especially provides that the county engineer shall determine what township, as well as what county roads shall be dragged, and shall arrange each year for the dragging of such roads either by contract or by day labor. He may recommend that the county board and the township boards employ persons, or contract with persons to act as highway patrolmen and maintain and drag the roads in a certain section. Vouchers for work on the county roads must be approved by the county engineer, and for work on the township roads by the township road overseer.³²

In 1915 a permissive statute, applying to both county and township roads, was passed authorizing the building of dams over dry watercourses, creeks and draws in such counties as should adopt the act. A simple resolution of the county board is sufficient to adopt the provisions of the act. A petition signed by 25 per cent of the taxpayers of the county requesting it makes the adoption of this act mandatory upon the county board. The law authorizes the building of dams principally for the purpose of carrying county or township roads across such streams or watercourses. Dams carrying township or post roads must be at least sixteen feet wide on top, and dams carrying county roads must be at least twenty feet wide. The county board is authorized to exercise the right of eminent domain, if necessary to secure the land for such

dams. A secondary purpose of the act is to provide dams which will impound water for irrigation purposes.³³

The County Road Unit Plan

So closely related are the county and township road systems that provision has been made whereby counties can abandon the township system entirely and operate under the county road unit plan. To adopt the county road unit plan a county board need only pass a resolution to that effect and publish it for three consecutive weeks in the county paper. Ninety days after the first publication, if no protest has been filed, the resolution goes into effect. A protest must be signed by 20 per cent of the qualified electors of the county. If a protest is filed, the county board must submit the proposition to a vote of the county. A petition signed by 20 per cent of the electors of the county requesting it is sufficient to compel the passage of a resolution by the county board, adopting the county road unit plan.

Under the county road unit system, all roads are county roads, but they must be divided into class A and class B roads, in the same proportion as county and township roads are designated under the general county road law. All rural mail routes not included in the state highway system must be included in the class A roads. Counties operating under the county road unit plan may levy not more than 3 mills for road purposes and 3.25 mills for bridge purposes. All road and bridge funds

which have been or may be received by the various townships must be placed in the county road and bridge funds when the county road unit plan is adopted. The adoption of this system obviously makes for simplification and centralization in road work.³⁴

Road Administration

Extensive and detailed provisions are included in the statutes concerning the administration of the county and township road work. Provision is made for the presentation of applications for the opening, altering, or vacating of roads. Such applications must be signed by at least twelve householders of the county living in the vicinity of the proposed changes. This must be passed upon by the county board, notice must be given all persons likely to be affected by the proposed change, and viewers must be appointed to act with the county surveyor in investigating the proposals.³⁵ Other provisions designate the proper width of county and township roads, the method to be used when the correct route of a road is uncertain, the condemnation and appropriation of building materials, the purchase of road machinery, and many other details of road administration.³⁶

Benefit District Roads

Some mention at least should be made of the benefit district method of financing permanent road improvements. This is a system whereby the land-owners of the district through which the proposed improvement passes assume a larger share of the tax burden resulting from the improvement than do the other tax-payers of the county. This

system was commonly used in building the first paved state highways in Kansas, but it has been supplanted there by the work of the state highway commission. As we have seen, the state highway commission has even assumed the burden of completing state highway construction begun by benefit districts and of repaying property owners the special assessments paid under the benefit district plan.³⁷ The principal use of the benefit district plan today is in paving roads in the more populous counties, especially in suburban localities.

Ordinarily a benefit district project is launched by the presentation of a petition to the county board signed by 51 per cent of the resident land-owners, owning at least 35 per cent of the land in the proposed district; by 35 per cent of the resident land-owners, owning at least 51 per cent of the land; or by the owners of 60 per cent of the land. This petition must set forth in detail the proposed improvement. Upon receipt of the petition, the county board may declare the project to be of public utility and may order the improvement, publishing the order in the county paper. Protest against the project must be made within thirty days of this publication. If a protest is filed, hearing must then be held upon the subject of the improvement before it is ordered by the county board.³⁸

Construction of benefit district roads is in charge of the county board, and the actual work is subject to the supervision of the county engineer. Land necessary to the project may be purchased or condemned. The road may be

built by contract or by direct labor, and bonds may be issued to pay the cost of construction. The ultimate cost of constructing a benefit district road is divided as follows: 60 per cent of the cost is borne by the county; $12\frac{1}{2}$ per cent is charged to the tax-payers of the township or townships through which the road passes, divided according to the area of the benefit district in each township; $12\frac{1}{2}$ per cent is charged to the tax-payers of the townships according to the length of the road in each township; and the remaining 15 per cent is collected in the form of special assessments against the property in the benefit district. The benefit district assessments are apportioned in accordance with the proximity of the property to the road. It should be noted that earlier acts, under which a number of benefit district roads were paved, provided that the property in the benefit districts should bear special assessments to the amount of 25 per cent of the total cost instead of 15 per cent as under the present law.³⁹

Bridges

The county's responsibility for the construction and maintenance of bridges is even more extensive than is the county's control over roads. Bridges on state highways, of course, are built and maintained by the state highway commission, but all other bridges, and all culverts, except a limited group, are classed as county bridges and culverts, and are subject to direct county control. Only those culverts which are on township roads and which have a span of less

than five feet are called township culverts, and are under township control.⁴⁰

Between the months of April and July each year, the county engineer is required to make a survey of all county bridges and culverts, and prepare recommendations and estimates for repairs and reconstructions. At the June meeting, the county board is required to prepare a list of the bridges and culverts it proposes to construct during the ensuing year. This list must be submitted to the county engineer to allow him to prepare estimates of the costs of the proposed new bridges. At the July meeting, the engineer's estimates for new construction and repairs must be submitted to the board. On the basis of these estimates the board must vote a bridge levy not to exceed 1.5 mills for bridge construction and repair during the ensuing year. In counties operating under the county road unit plan this levy may be 3.25 mills. In any case the levy does not become final until the board has advertised and held a hearing upon the proposed levy, giving opportunity for protests to be made against the levy or any part of it. The levy must include the items in the engineers estimates and enough in addition to create or maintain a contingent bridge fund equal to twenty per cent of the annual bridge levy. The board is not bound, however, to spend this fund for the exact work for which it was raised, but may do other bridge work if it is necessary.⁴¹

All county bridge work must be done in accordance

with standard specifications furnished by the state highway commission.⁴² All bridge construction, township or county, must be approved by the county engineer when the cost of the work does not exceed \$2,000. When the work is estimated to exceed that amount it must be approved by the state highway engineer.⁴³ County bridges may be built by contract or by direct day-labor under the direction of the county engineer. Contracts for work to cost more than \$500 must be publicly let, under restrictions similar to those governing road contracts. Permission must be granted by the state highway commission for the construction of any county bridge by the day-labor method.⁴⁴ County boards may pay for the construction of any bridge costing no more than \$40,000 out of the county bridge fund. Under certain circumstances, and in special counties, the statutes make some exceptions, but the general rule is that no bridge repair or construction costing more than \$40,000 shall be ordered without a vote of approval from the electorate of the county. The county board may of its own volition submit such a proposition to vote, or a petition signed by 10 per cent of the voters of the county may order its submission.⁴⁵

All bridges and the so-called "county" culverts (those with a span of more than five feet) on township roads must be built and maintained by the county board out of the county bridge fund. Township culverts and all approaches to bridges and culverts on township roads must be maintained

by the township board of highway commissioners out of the township road fund.⁴⁶ There is no separate township bridge levy. Township culverts may be built directly or by contract and must follow the specifications of the county engineer.

If a bridge or culvert should be needed at a place on or near a county line, the adjoining counties may cooperate in paying the cost of repairing or constructing the bridge. The cost shall be apportioned at a joint meeting of the county boards of the two counties in proportion to their respective assessed valuations. Where the county boards are unable to agree, under such circumstances, upon the construction or repair of the bridge, the question must be submitted to the state highway commission for settlement. Similarly, a county may cooperate with a county of an adjoining state, or two townships may cooperate. Questions arising between two townships on such a question must be submitted to the county board for settlement.⁴⁷

A proposal to build a bridge over a river or creek separating two counties may be initiated by ten per cent of the voters of each county by their presenting petitions to their respective county boards. Upon receipt of these petitions special elections must be called in each county. Before the elections are held, the state highway commission must apportion the cost of the proposed bridge between the two counties, and this apportionment must be included in the propositions voted upon. This proposition may be

submitted at either a general or a special election, and a majority vote in each county is necessary to carry it.⁴⁸ To build a bridge or dam over a navigible stream, permission must be had from the state highway commission, if the bridge or dam is to be a part of a highway system, and from the state public utilities commission if the bridge or dam is not to be a part of a highway system.⁴⁹

At the beginning of this chapter it was stated that the total county tax levied in 1929 for road and bridge purposes was $8\frac{1}{2}$ million dollars. Of this amount a little more than 4 million dollars, or slightly less than half the total, was levied for the various county bridge funds.⁵⁰ Since townships do not levy a separate bridge fund, it is more difficult to determine the amount of township expenditures for bridges. It is probably safe to estimate, however, that more than a third of the total road and bridge tax of the counties and townships goes into bridge repair and construction. On the basis of the eight year average from 1923 to 1929, the annual expenditure of counties and townships for bridges, exclusive of any state or federal aid, can be estimated at about five million dollars per year.⁵¹ The entire levy for state government purposes is less than twice that amount.⁵²

Drainage Projects

Drainage is a public work of growing importance in certain parts of Kansas, although the climate and topography of the state are such that it will never be of general

importance. Drainage projects commonly serve one of two purposes. Either they are intended primarily to reclaim swampy land for agricultural uses or they are intended to prevent, and to furnish protection against, flood and overflow. In Kansas the latter purpose is of chief importance. Nearly sixty per cent of the drainage projects in the state are planned primarily as protection against overflow.⁵³ This is in contrast with the state of Missouri, for example, where much more than half the drainage projects are for purposes of reclamation.⁵⁴ Kansas has very little marshy land to be reclaimed by drainage, but there are several river valleys where flood control is necessary. It is significant that much more than half the drained area in the state is in the valleys of the Kaw river and two of its tributaries, the Delaware river and the Waukarusa river.⁵⁵ Douglas county, with 48,500 acres in drainage projects, has a larger drained area than any other county in the state.⁵⁶

In 1930 there was 257,169 acres in drainage projects in Kansas, an increase of 174 per cent over 1920, when there was 93,856 acres. To drain this area, 324.7 miles of ditches had been dug by 1930, and 212.1 miles of drains laid. This work comprised 88 different enterprises with an invested capital of over \$2,700,000.⁵⁷ Of this large area only 39,566 acres, or 15.4 per cent of the whole, was in county drainage projects.⁵⁸ Individually owned projects covered 5,550 acres, and township drains 7,460 acres. By far the largest area, 204,593 acres, was in projects established and

maintained by special drainage districts. Eighty-three per cent of the capital invested was in drainage district projects.

The earliest drainage law now in the statutes was passed in 1879, providing for the construction of drainage projects in single townships under the direction of the township trustee. Such projects may be established by two or more townships jointly, in which case the trustees constitute a special joint board. Township drains are paid for by special assessments against the property benefitted by the drainage. Appeal from the decision of the township trustee in awarding compensation, or in assigning sections of the drainage project to be constructed or paid for, may be taken by persons affected to the probate court. Township drainage projects must be initiated by petition of one or more land-owners affected by the proposed project.⁵⁹

In 1886 an act was passed authorizing the building of drainage projects by county boards of commissioners directly. It is under this act that the so-called county drains have been constructed. In 1905 the first of a series of acts authorizing the establishment of drainage districts was passed. Similar and supplementary drainage acts were passed in 1907, 1909, 1911, and 1931.⁶⁰

The act of 1886 authorizing the construction of county drains is almost identical in the procedure it provides with the township act of 1879, except, of course, that it applies to counties. Any county board is authorized upon the presentation of a petition from one

or more land-owners who would be affected by the proposed improvement, to order the construction of a system of ditches or drains. The petition must set forth in detail the proposed improvement, and the petitioner must post a bond for the payment of costs, in case the board should refuse to grant the prayer of the petitioner. After the receipt of a petition, the county board must set a date for a hearing, and the petitioner must notify the other land-owners to be affected by the drainage project of the date set for the proceedings on the petition.

If the board decides that the proposed drainage project is conducive to public welfare, it may order the establishment of the necessary ditches and drains. The actual work of construction is performed by the persons through whose property the ditch is to pass. The county board, in determining the course and specifications of the construction, apportions the labor of construction to the various property owners, and assesses any costs against the property benefitted. Persons whose property will be taken for the construction of the proposed ditches or watercourses must apply in writing for compensation. Compensation is apportioned by the county board.

Any person interested in the ditch or drain, or in the award of compensation, may appeal from the decision of the county board to the probate judge. In such case the probate judge summons a jury of six free-holders of the county, not resident in any township through which the projected ditch will pass, to view the premises to be

affected and to return a verdict determining whether the proposed drain will be conducive to public health and welfare as located, what amount of compensation shall be awarded the various property owners whose property is appropriated, and how much of the labor and costs shall be assessed to each property-owner affected. The judge then issues an order in accordance with the findings of the jury. If the decision is adverse to him, the appellant must bear the costs of the appeal to the probate court.

The probate judge at the appeal, and the county board at the original hearing, must set a time at which the work on the ditch or drain must be completed. If it is not completed by the time set, the county board, or the probate judge, if appeal has been taken, must order the work remaining undone to be let to the lowest bidder for completion. The cost of such completion is assessed against the section of property to which the uncompleted
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work was originally assigned.

This act and the act authorizing township drains were designed as a means of enforcing cooperation in work which was deemed to be primarily of private rather than public purpose. Each person is expected to do any pay for his own share of the work. Public interest is recognized in the provision allowing the county board a discretion in accepting or rejecting the original petition, but the work is regarded as only semi-public in character. The public interest is further recognized,

however, in a provision that the cost of maintenance shall be paid out of a special tax levied upon the entire county.⁶² In that respect the township act differs from the county act, for the former provides that the cost of maintenance shall be assessed against the parties benefitted thereby.⁶³

Under the provisions of another act counties are authorized to construct drains and ditches where such are necessary to protect county highways. These can be constructed only upon agreement participated in by at least sixty per cent of the resident property owners benefitted who agree to donate land to be used in the drainage work. Under those conditions, and if the project does not cost more than \$1,000, the county board may levy a special tax to pay for such work.⁶⁴

As has been stated, most of the drainage work in Kansas is not the direct responsibility of the county, but it is performed by special drainage districts, organized for the purpose, possessing their own governing board, clothed with the power to levy taxes and special assessments, and holding the position of quasi-municipal corporations. To present the details of all the laws under which drainage districts can be organized would require more labor than there is time for in this study. The responsibility of the county is involved chiefly in that in most cases drainage districts are incorporated by the county board upon receipt of a petition from the land-owners con-

cerned.⁶⁵ Under certain circumstances, however, incorporation is by the district court.⁶⁶ And of course, the taxes of the drainage districts, like those of all taxing units, are collected through the agency of the county's financial officers, the assessor, the treasurer, and the clerk. Despite these relationships between the drainage districts and the counties, the drainage districts are, in their administration, largely independent of county control. They may be organized either within single counties or across county lines, and they may be said to have absorbed some of the county's functions. At least they perform functions which were at one time regarded as proper activities of the county. There are sixty-one separate drainage districts in Kansas, adding a substantial number to the already large group of taxing bodies in the state.⁶⁷

The most recent, and most comprehensive, law under which drainage districts may be organized was passed in 1929, providing for the incorporation by the district court, of what is called "conservancy districts". These districts have governing bodies, the power of taxation, the power of eminent domain, and other powers similar to those given drainage districts under earlier acts. The powers of the conservancy districts organized under this act are more comprehensive than are those of the earlier districts. The conservancy districts are authorized to establish dikes, ditches, levees, etc. for the purpose of preventing floods, to regulate stream channels, to reclaim land, to provide irrigation, to control watercourses or to eliminate them

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them entirely. Three such districts have been organized.⁶⁹

County Levees

The county board directly is authorized to construct levees and dikes to control streams or prevent floods. This work, like the construction of drainage ditches, must be initiated by petition from the owners of land which would be affected by the levees. A hearing must be held, plans made, and sections of the levee assigned to the various properties to be protected. Construction may be by contract or may be done by the persons to whom the costs are assigned. The county board must appoint a supervisor for each section into which the levee has been divided. He is paid by the county board from assessments against the property affected. This law, like the county drainage act, is chiefly a device for securing cooperation among property-owners.⁷⁰ Certain classes of drainage districts are also authorized to construct levees as a part of flood-control work.⁷¹ There are in the state twenty such special levee districts.⁷²

County Buildings

Except for roads and bridges, the public construction of the county is not extensive. Courthouses and jails must be provided, but once they have been constructed, they are not likely to need to be replaced very soon. Counties commonly build poorhouses, and they may need to erect other buildings, such as garages, machinery shelters, etc., but the construction is by no means as extensive or as varied

as is that of a city. General laws, supplemented by a great variety of special acts, govern the power of the county to erect public buildings. A vote of the electorate generally must approve all public building. A comprehensive exception to this is the provision that all counties having a valuation of \$6,000,000 or more and having the sum of not less than \$25,000 in its treasury above its indebtedness, may erect or repair a public building without a special election, when petitioned to do so by one-fourth of the voters of the county. The board must, when so petitioned, levy a tax of not more than two mills, to run for not more than five years, for purposes of constructing or repairing the public building in question. It may also use the \$25,000 surplus for that purpose. The statutes provide a great many other exceptions to the general rule that an election must be called, but most of these laws are so worded as to apply to only one county. They are in effect special enabling acts. While the statutes provide a general law governing the construction of county buildings, so numerous are the special acts on this subject that it seems safe to assume that most of the more important county buildings are erected under exceptions to the rule.

CHAPTER VIII

THE COUNTY AND PUBLIC WELFARE

The County's Position in Welfare Work

Upon the county in Kansas, more than upon any other unit of government, is devolved the responsibility of promoting public welfare. Sixty years ago that responsibility was thought of as properly met if the county made provision for the care of the poor of the community. The statutes of 1868 placed the responsibility for poor relief squarely upon the county, in the provision that:

"Every county shall relieve and support all poor and indigent persons lawfully settled therein, whenever they shall stand in need thereof; and the board of county commissioners may raise money for the support and employment of the poor in the same way and manner as in the twenty-ninth section of this act is provided."¹

The "twenty-ninth section of this act" provided for the establishment of county asylums by a vote of the people.

These provisions still form the basis for the poor relief of the counties in Kansas, but they have been supplemented and elaborated greatly, especially in recent years, as the duties of the county have been increased. At the outset, public welfare work consisted chiefly of doleing out money to the poor, or supporting them in poorhouses. There is still much of that sort of welfare work, but, of late, steps have been taken to provide a more varied program of intelligently organized and directed welfare work.

Distinctions have been made among the various classes of persons who are in need of public support, and, throughout the years, the system has been altered to provide special care for dependent and delinquent children, for dependent mothers, for the crippled, the blind, and the other defectives. Quite early the need for protecting at least the health of the entire community was recognized in the establishment of county boards of health. Throughout all this work, the responsibility of the county has remained of primary importance.

The County and Poor Relief

Upon the county, as we have seen, falls the responsibility of paying the support of the poor of the county. To meet this expense the county board is authorized to levy a tax upon the property of the county. By general law this tax is limited to .5 mills per dollar,² but special acts, referring to certain classes of counties, raise the amount that may be levied to .8 mills in the two largest counties of the state.³ The money raised by this levy constitutes the county poor fund, which furnishes the revenue, as we shall see, not only for the relief of the poor, but for many other of the public welfare functions of the county.

Levies for poor relief are commonly made in nearly all of the counties of the state, although in 1932, three counties found it possible to perform the poor relief functions imposed upon them without levying a special poor fund tax.⁴ The poor levy amounts to about five per cent of the total county levy in most Kansas counties. In 1932 the total poor

levy for all the counties making such levy was more than \$1,775,000, or a little less than one dollar for every person in the state. It is worthy of note that the total poor levy of the state increased in the five years from 1927 to 1932 by approximately 43 per cent.⁵

In most of the counties of the state the administration of the poor fund, and the care of the poor are functions of the various township trustees, and the governing bodies of the various cities. Each of these officials, within his own jurisdiction, is designated as overseer of the poor, and is responsible for the care of all poor persons in the township or city. The overseers are required to secure proper care for the poor of their districts, either in the county poorhouse or by contracting with some individual for their care. They are required to keep a list of the poor in the poor-book of their districts. They are authorized to hear applications from persons who believe they are entitled to relief. Appeal from the decision of the overseer may be taken to the county board.

In addition to caring for persons who are permanently, or for a long time, in need of assistance, the overseers are authorized to extend aid to persons who are temporarily in need. Poor persons falling sick within the township or city may be aided by the overseer, even though they are not inhabitants of his district. Similarly he is authorized to furnish a decent burial to any pauper who dies in his district, no matter where his residence may have been. Over-

seers are required to make annual reports to the county board and are authorized to draw upon the county treasurer for the funds necessary in the performance of their duties.⁶

Such is the rather simple and elementary sort of poor administration provided by law for most of the counties of the state. The likelihood that the overseers of the poor will be trained social workers, is, of course, slight. Approximately a third of the counties of the state are authorized to establish a county system of poor administration. In all counties with a population of more than 22,000, and in those with a population of from 17,000 to 22,000 having a second class city, the county board is authorized to appoint or employ a salaried poor commissioner to direct the poor relief work of the county and to take over the functions which in smaller counties are performed by the township and city overseers of the poor.⁷

At the present time seventeen, or only about half, of the counties which are authorized to do so have appointed a salaried commissioner of the poor. Of this group with a salaried commissioner four counties have selected one member of the county board to serve as poor commissioner. In other counties the county board as a whole administers the poor fund, or the individual commissioners administer it within their own districts. Some counties operate under the provisions of the general^{law} applying to the smaller counties of the state, and a few delegate the administration of poor relief to some unofficial agency such as the local Red Cross nurse, or the Salvation Army. In one county the

county clerk has been designated as commissioner of the poor.⁸

The county board in any county operating under the township overseer system is required to pay the overseers three dollars per day each for every day spent in the work of poor administration.⁹ In larger counties the county board is authorized to employ someone to perform the duties of commissioner of the poor and to pay him not more than \$4 per day or \$500 per year. In counties where a commissioner of the poor is appointed as a salaried official, his salary is fixed by statute at \$500 per year in all counties smaller than 75,000 population. In counties from 75,000 to 100,000 his salary is fixed at \$1,000 per year; in counties from 100,000 to 125,000, at \$2,100, and in counties of more than 125,000, he is given a salary of \$2,400. In the larger counties an allowance for clerk hire in the office of the poor commissioner may be made by the county board.¹⁰

County Poorhouses

Much of the poor relief work of the county in Kansas takes the form of outdoor relief, direct grants of food, clothing, and the other necessities of life to poor persons of the community. At the same time many of the poor are cared for in poorhouses maintained by the counties. The county board in any county is authorized to purchase ground and to establish there a county asylum or poorhouse. The board must employ a superintendent to take charge of

it, and is required to appoint annually a physician to serve the inmates of the county poorhouse. The board is authorized to levy a tax, with the approval of the electorate of the county, to provide for the establishment of the asylum. The superintendent of the asylum is required to give bond for the faithful performance of his duties, and to make an annual report to the county board of the affairs of the poorhouse, the number of inmates, their health, the expenses incurred during the year, etc. Each member of the county board is required to make an annual visit to the poorhouse and inspect it thoroughly. The board may also appoint a board of visitors annually to visit the asylum and to report upon it. Such a board must be made up of one member from each township of the county.¹¹

In counties in which a commissioner of the poor has been employed or appointed, it is his duty to make weekly inspections of the county poorhouse and to report monthly on its condition to the county board. In such counties no person may be admitted to the poorhouse as an inmate except upon order signed by the poor commissioner.¹²

Most of the counties of the state provide poorhouses, usually rather extensive farms, which seek through the agricultural products they grow for their own use or for sale to be in part self-supporting. In 1929, 98 of the 105 counties reported to the state board of administration the conditions of their poor farms. Twenty-four counties reported that they maintained no poorhouse. The remaining

seventy-four reported poorhouses with from none to 102 inmates. These seventy-four institutions had an income of more than \$90,000 in 1929, but their cost above the income was \$193,610. This expenditure provided for 1,164 inmates at an average net cost of about \$165 per person per year. Complete reports from all the 105 counties in 1930 showed a similar situation to that of 1929. Twenty-four of the 105 counties maintained no county home.¹³

In those counties maintaining no county poor farm, more reliance is necessarily placed upon outdoor relief, although some counties have contracted with private institutions, sometimes in remote parts of the state, to care for the county poor. In other counties, it has been discovered, there is a growing tendency to grant pensions to poor persons of the county. These pensions are granted under a phrase in the mother's pension law which is discussed below.

Mother's Aid and Other Pensions

In 1915 Kansas adopted a law authorizing county boards of commissioners to grant pensions to dependent mothers. This act was amended in 1917 and in 1921. The law, in its present form, authorizes any mother whose child or children are under the ages of 14, who is widowed, divorced, whose husband is unable to earn a living or is confined in any penal or other state institution, or who has been abandoned for a period of three months or more, to apply to the county board for aid. Such applicant must have been a resident of

the state for two years and of the county for one year preceding the time of making application. She must be a woman of good character, provident, and fit to have the care of her children. Under such conditions, and if the children have no other means of support, it is the duty of the county board to grant the applicant a pension of not more than \$50 per month. Applications for such pensions must be supported by affidavits and must be filed at the office of the county clerk.

Before such a pension is granted, the county board of public welfare, if there be such, or an especially appointed board of three women of the county must investigate conditions of the applicant for a pension and must report as to the truth of the statements made in her application as to her needs, and must recommend the amount the county ought to provide toward the support of the mother and her children. Sums so fixed may be raised or lowered by the county board, or the pension may be terminated at the discretion of the board.¹⁴

Two attorney-generals of Kansas have ruled that this act is mandatory upon the county board, but the question has never been considered by the courts, and the law is very commonly disregarded in many of the counties of the state. In fact, in 1931, 44 of the 105 counties in Kansas gave no mother's aid pensions, despite the fact that many applications had been received. In many counties where the pensions are granted, their administration falls far short

of the purpose of the law.¹⁵

It is under the first clause in this Mother's Aid act that some counties have found authorization for granting pensions to the county poor in general, without regard for their status as parents. The clause states,

"That the board of county commissioners may in their discretion allow and pay to poor persons who otherwise would become chargeable wholly or in part upon the county and who are of mature years and sound mind, and who from their general character will probably be benefitted thereby; - - - - - such annual allowance as will not exceed the charge of the maintenance of such persons, - - - - by the county in the ordinary mode, the said board taking the usual amount of charges in like cases as the rule for making such allowance:"¹⁶

It is an anomalous situation that some counties should disregard the main provision of this act while others should find in it authorization for a practice not included in its chief purpose.

Special provision is made in the statutes for the granting of pensions by the county board to disabled residents. Any person who has lost both eyes, or both hands or feet, or is otherwise so disabled as to prevent him from performing manual labor, and who has no relatives upon whom he can depend for support, may apply to his county board for a pension. If such applicant is more than twenty-one years of age, has been for ten years a resident of the state and for two years a resident of the county, or was an actual resident of the state at the time he became disabled, the county board, by unanimous vote, may grant him a pension not to exceed \$50 per month. If more

than \$25 per month is granted, the pension must be approved by the electorate of the county. The ballots used carry only the statements for and against granting a pension of a specified amount to the person making application. No provision is made for informing the public of the merits of the person's claim against the county.¹⁷

Juvenile Courts and Juvenile Detention Homes

The composition, powers and functions of the juvenile court are discussed elsewhere in this study,¹⁸ but some mention should be made of the work of this institution in regard to public welfare. The juvenile court is authorized to care for all neglected, dependent or delinquent children. The work of the court is two-fold. The court is responsible for caring for dependent and neglected children, that is, children whose parents do not support them, orphans, or deserted children. Such children, the court is authorized to place in public or private childrens' homes or institutions, or to award to individuals or families who assume the responsibility of serving as guardians for the children.¹⁹ Delinquent children are such as have violated some law, are incorrigible, are growing up in a life of idleness or crime, or associate with thieves or vicious or immoral persons. Unfortunately, it is delinquent children only which are usually thought of as being wards of the juvenile court. Such children may be assigned to the custody of probation officers or they may, after a juvenile court trial, be assigned to one of the state institutions for the care of

delinquent children.

Any county in Kansas with a population of more than 20,000 may establish a home for the care of dependent or delinquent boys and girls under the ages of eighteen who are in custody of the juvenile court. Such homes may be established only after a petition has been received by the county board signed by 15 per cent of the voters of the county, and after the proposal has been approved by the electorate of the county. Such homes must be conducted as nearly as possible as are family homes, and, where possible, the children must be educated in the public schools. The homes must be under the direction of a superintendent or matron who is under the supervision of the judge of the juvenile court. The salary of the matron or superintendent of the home shall be fixed by the county board, and the board may levy special tax for the support of the home.²⁰

In any county having a city with a population of more than 53,000, the county board, upon receipt of a petition signed by 30 per cent of the voters of the county may, by unanimous vote of the board, establish a juvenile home without submitting the question to the electorate. Such homes shall admit only children under sixteen years of age. The supervision of the homes must be given to a man and his wife selected by the juvenile court of the county. To advise such managers, the county board appoints an advisory council of five women serving over-lapping terms of five years, without pay. The pay of the managers is fixed by the county

board. To establish such a home the county board may levy a tax of not more than 3 mills, and to maintain it the board may levy an annual tax of not more than 1.5 mills.²¹

In counties containing a city of more than 70,000 population movement for the establishment of a home for delinquent boys under the age of 16 may be initiated by a petition signed by 10 per cent of the voters of the county. Upon receipt of such a petition the county board must submit the proposal to a vote of the electorate. In a like manner a home for delinquent girls under the age of 16 may be established, but two such proposals may not be voted upon at the same election. To purchase and maintain such homes, the county board may levy a tax of not more than 1.5 mills. Although these are called homes for delinquents, the law provides that any child coming under the jurisdiction of the juvenile court may be committed to them.²²

This last provision is indicative of what is regarded by some students of the subject as a common weakness of the Kansas juvenile court system, a failure to distinguish between delinquent children who definitely need correction, and dependent or neglected children who have broken no law and merely need protection and care. No definite figures are available, but it is estimated that two-thirds of the boys in the State Industrial School at Topeka were not committed as delinquent children, but were dependent. Nevertheless, they are accorded the same treatment as those who have been guilty of delinquency.²³

The County and Public Health

In 1885 a law was passed establishing the state board of health and designating the county board of commissioners as ex officio the county board of health.²⁴ With subsequent amendments, that remains the law under which the county public health activities are conducted. The law provides that each county board, in its capacity as county board of health, must appoint a county physician to serve at the discretion of the county board. The physician is ex officio a member of the local board of health. These county boards operate in conjunction with, but do not supercede, any city boards of health in the county.

The county physician, or health officer, as he is now called, is required to perform a variety of duties. He receives and distributes forms supplied by the state board of health. He receives reports from physicians, assessors and local boards of health and transmits them to the state board. At the opening of school each year, he is required to inspect each school building and grounds, and must make such additional inspections as are necessary. He must investigate cases of contagious diseases which have not been reported as required by law. Working under the supervision of the state board of health he must enforce the quarantine regulations of the state. The health officer is subject to removal by the state board.²⁵

With the approval of the county board of health, the health officer may employ a skilled professional nurse, who

may be paid by the county board, at the rate of five dollars per day. The local board of health may employ other additional personnel to assist the health officer. In actual practice not many counties have availed themselves of the privilege of employing nurses and assistants to the health officer. In some counties, city or school nurses cooperate with the county health officer in his work. In a number of counties local Red Cross nurses receive partial support from the county in return for work performed in the county health service. There are several variations on these schemes. In some counties the same nurse serves both county and schools, in others, as many as three agencies may cooperate in providing a public health nurse in the county. In one or two instances, hospitals within the county provide someone to do out-nursing. Only nine counties in the state, in 1932, had complete county health units, that is, a full-time²⁶ county nurse and physician.

In 1929 an act was passed authorizing any county except those having populations of from 25,000 to 35,000 and taxable valuations of from \$62,000,000 to \$75,000,000 to levy a special health fund tax of not more than .5 mills on the dollar. This fund is to be used to assist in carrying out the health rules, laws and regulations of the state within the county, to pay the salary of the county health officer, and to pay for additional personnel employed to aid in the public health work of the county.²⁷

Hospital Care for the Poor

The law requires that any poor person in the county

in need of hospital care must be given it at the expense of the county. Any physician treating such a person may report his need to the county board of health, with a statement of the person's affliction together with the opinion that the affliction can be cured by a surgical operation or hospital care. It is the duty of the county board of health, upon receipt of such a report, to provide transportation to the state hospital maintained as a part of the University of Kansas School of Medicine at Rosedale. The expenses of such patients while in the hospital must be paid by the county sending them there. Inmates of county poorhouses may apply to the county board of health for similar attention. The law provides that if any person treated at county expense later acquires property, the county may demand and recover reimbursement for the cost of the treatment.²⁸ County boards may make special contracts with the board of regents at the state university for the care of such obstetrical patients as are public charges.²⁹

The Treatment of Crippled Children

In 1931 an act was passed requiring all counties to levy an annual tax of .1 mills to provide hospital care for crippled children. Taxes so raised must be kept in a special fund known as the Crippled Children's Fund. If this is not used within the year for which it was levied, it becomes a part of the general fund of the county.

The administration of the crippled children's fund is under the direction of the probate court. The fund is

to be used to provide surgical and hospital care for all children in the county who are crippled and who would be likely to be materially benefitted by such care and treatment, but whose parents are unable to provide it for them. The case of any crippled child in the county, whose parents or guardian do not object, may be investigated by a competent physician on the order of the probate judge, and must be investigated if a complaint requesting it is filed with the court by any elector of the county. Hearings upon the report of the physician are conducted as are hearings in the juvenile court. If the complaint is accompanied by the certification of a practicing physician that the child in question is in need of treatment, the judge need not order a separate investigation of the case by another physician.

At the hearing, the court decides the needs of the child, and with the consent of the parents or guardian of the child, may order him to be sent to some approved hospital in the state. A special state commission for crippled children has been created by this same law, and its duties include the holding of diagnostic clinics at the expense of the counties in which they are held and the approving of hospitals for the treatment of children under this act.³⁰ The state has for many years maintained a home for crippled children at the state Orphan's home at Atchison.³¹

The cost of hearings and of transporting the children to and from the hospital under this act must be paid from

the crippled children's fund of the county, but no more than one-fourth of the total fund may be used in any one case. Approved hospitals are permitted to charge a basic fee of three dollars per day. Convalescing homes may charge a rate of not more than nine dollars per week. At the time of the hearing the court may order the parents or guardian of the child to pay a portion of the expenses of the treatment of the child.³²

County Hospitals

Successive legislative enactments, beginning about 1913, have authorized the establishment of county hospitals. At the present time, any county in the state with a population of less than 40,000, may establish a county hospital by vote of the electorate. Such a proposition must be put to a vote by the county board whenever a petition signed by 25 per cent of the resident free-holders of the county, ten per cent of whom are not residents of the city in which it is proposed to locate the hospital, is presented. Such hospitals are governed by a board of hospital trustees of five members appointed by the county board. Not more than three of the trustees may be residents of the city in which it is proposed to locate the hospital. The board thus chosen is given full control of the hospital with power to purchase land, advertise for bids and let a contract for the construction of a hospital building, make rules for its operation, employ nurses and attendants, and control the receipts and expenditures of the institution.

At the election at which the question of whether a hospital is to be established is voted upon, the proposal must include the rate of tax to be levied for that purpose. In addition to the levy thus set, the county may levy a tax of not more than .5 mills for the support of the county hospital. Such hospitals are for the use of the residents of the county, but only paupers may be admitted to free service. All other persons must be charged a reasonable fee to be fixed by the hospital board. The trustees of the hospital may receive such compensation as the board of trustees may decide, but in any case, not more than \$5 per day nor \$75 per year.³³

In addition to the general act authorizing the establishment and maintenance of county hospitals, certain acts extend special privileges with regard to the amount of tax levy for hospital purposes, etc. to special classes of counties. Thus, counties of not more than 30,000 population in which there is a city of the first class may levy a tax of not more than one mill for the support of a hospital, and may enter into a contract with any hospital already established in the county for its use as a county hospital.³⁴ A similar provision is made with regard to counties having a population of from 3,000 to 5,000 and a valuation of \$8,000,000 to \$12,000,000 and containing a third-class city of from 700 to 1,600 population. Such counties may levy only .5 mills for hospital purposes, but may enter into a contract with any hospital already established in the county.³⁵

By a special classification, Cherokee county is authorized to establish a county tuberculosis sanatorium upon petition signed by 25 per cent of the voters of the county. A tax of not to exceed 2 mills may be levied to establish such a sanatorium, and a tax of .5 mills may be levied thereafter to support it.³⁶ Another class of counties, those of from 60,000 to 75,000 population, is authorized to establish a county tuberculosis sanatorium as one unit of a county Settlement of Public Welfare comprising two other institutions as well, the county home and the county hospital. At the present time no county falls within that population class, although in 1923, at the time this law was revised, and incorporated into the statutes, the classification included Shawnee county.³⁷

County Inmates of State Institutions

In addition to the welfare institutions directly under county control, the county has certain responsibilities toward the support of individuals in the various state institutions. The county, as has been shown, is required to support crippled children, and the poor of the county that are sent to the state hospital at Rosedale. The state maintains a sanatorium for the treatment of tubercular persons at Norton. Persons unable to pay for their own support at the tubercular hospital may apply to the superintendent of the hospital for admission as county patients. If they are admitted, they must be supported from the poor funds of their respective counties at rates fixed by the

state board of administration.³⁸ The inmates of the state training school for the feeble-minded at Winfield who are unable to pay their own support must be supported by their home counties at the rate of \$40 each per year. The transportation of paupers to the institution must also be furnished by the county.³⁹ In another section of this study the commitment of insane to public institutions is discussed.⁴⁰ The support of an insane person in the state institution must be borne in part by the relatives of the person or by his estate, but if he is without relatives and is destitute, the county must bear a part of the burden of his support.⁴¹

For lack of room, and for other reasons, not all persons who apply for admission to the various state hospitals for the insane and feeble-minded are admitted. Destitute insane persons who are thus denied admission become a charge upon the county, and are commonly kept in the county poorhouse. To such an extent is this the case that in 1929 221 of the 1,164 inmates of the county poorhouses of the state were either insane or feeble-minded.⁴² The state assumes its share of the support of these destitute insane by paying the county \$2 per week for each such person who has been refused admission to the state hospital.⁴³

The Importance of Residence Requirements

In the administration of all public welfare activities, the question of residence is of the utmost importance to the persons needing relief. No person who

is not a legal resident of the state of Kansas can be admitted to any of the various charitable institutions of the state.⁴⁴ Counties are held responsible only for the support of their own residents, although they may grant support in the county home to non-residents of the county.⁴⁵ Legal residence in the state means continuous residence for a period of six months preceding the time at which residence is claimed.⁴⁶ Within the city or county the same general rule holds, although if a person is a legal resident of the state and has not lived for six months continuously in any county he is deemed to be a legal resident of the county in which he has resided the longest time.⁴⁷ Any time that a person has received aid from the county or has been maintained at public expense in any charitable institution may not be counted in determining legal residence.⁴⁸

The question of residence arises frequently in the practical administration of poor relief. The all too common practice of shipping paupers on to the next town has sometimes been used by counties as a means of evading their responsibilities in caring for their poor. Problems have arisen over the treatment to be accorded insane persons found in the state but having no residence there. The state hospital may refuse to accept such a person, the county is not bound to support him, and if his home state refuses to accept him, as sometimes happens, there is no way he can be disposed of unless the county voluntarily assumes the

the burden of his support. No county dares to be over generous in supporting non-resident poor, lest it suffer a sudden influx of paupers to the county.

The mobility that cheap second-hand motor cars has given chronically poverty-stricken transient workers and their families complicates the problem of administering poor relief under the system of county responsibility. The law assumes that the poor, being poor, will be compelled to stay at home, and thus make it relatively easy to administer poor relief based upon the theory that each community should support its own poor. The present situation makes it increasingly difficult for county responsibility to be fixed, and increasingly easy for county officials to send a large part of the poor they have to deal with on to the next county.

CHAPTER IX

THE COURTS AND LAW ENFORCEMENT

The Dual Responsibility of the County's Law Enforcement Officers

In law enforcement the county is important, not as a unit of self-government, but chiefly as a geographical division of convenient size and character for administrative purposes. The principal law enforcement officials, the sheriff, the county attorney, and the coroner, although they are commonly thought of as county officers, are, in fact, charged with the enforcement of state laws. The probate judge, the clerk of the district court, and even the district judge are also commonly regarded as county officers, but they, like the police officers of the county, are primarily agents of the state government attached to the county as a geographical unit.¹ Although they are elected locally, they are legally representatives of the state.

Law enforcement and the administration of justice in the United States are almost entirely functions of the state as distinguished from the national government. In most of

our everyday affairs we are regulated only by state laws. In Kansas, these state laws, for the most part, are not enforced by the state government directly. To be sure, certain special types of laws are enforced by state officials. The game laws, for example, are enforced under the direction of the state game warden. Laws regarding certain types of corporations are enforced by various state departments and commissions. Moreover, the governor and the attorney-general have certain supervisory powers of law enforcement in general. But there is not state police force, and the work of police administration is largely delegated to city, county, and other local officers. These local officials, the sheriff in the county, and the police in the city, are charged principally with enforcing state laws. So far as function is concerned, they are state officers. To an even greater extent is this true of judicial officials.

But function is not the only criterion by which we should judge the nature of our court system and our law enforcing officials. We must not underestimate the importance of the fact that these officials are all chosen, by election or appointment, locally. Most of them are paid out of county funds. If not their jurisdiction, at least their common sphere of activity is the county. Their chief concern is in their county. They are subject to all the local interest and influence that local election creates. The administrative responsibility of these officials to the

state government and the legal responsibility to the state law are undeniably important, but their elective responsibility to the county is important also. This divided responsibility can perhaps be illustrated in the case of the law against desecration of the Sabbath. Since 1868 the state law has prohibited all except "necessary" work on Sunday,² and this has been construed as prohibiting theatrical performances, yet for years certain communities in the state have enjoyed motion picture shows on Sunday with seemingly no effort on the part of the authorities of the city or county to close them. These have usually been small communities, homogeneous, and of a religious faith that approved Sunday entertainment. Their city police officers shared their opinions and were expected to disregard the state law. The law enforcing officials of their counties bowed to the power of local public opinion and silently acquiesced in this disregard of the law.³

This is perhaps an extreme illustration, but it is nevertheless typical of the influence of public opinion over law enforcement. It is true that the county is not autonomous. Its legislative power is slight and limited. Legally it is merely an administrative sub-division of the state. It has not the legislative power nor the definite corporate status of the city. But, despite all that, the county is politically self-conscious. This corporate consciousness is not pronounced, but it is sufficient to

give to certain counties definite characters which distinguish them from other counties. This is evidenced particularly in law enforcement. Certain counties are notoriously more lax in enforcing the prohibitory law, for example, than are others. Certain counties manifestly take pride in their public works, while others seemingly do not. In a predominately rural community, especially, the importance of the county as a symbol of a definite social grouping should not be disregarded.

It is this corporate personality of the county that gives the county courts and the law enforcing officials their dual responsibility. Their responsibility to the state is based in law, and their responsibility to the county is based in custom. In a time of conflict of responsibilities, the law may be made to take precedence, but under ordinary circumstances the subtle influence of local public opinion is always at work.

The District Court

The principal trial court in Kansas is the district court, which is presided over by the district judge. Provision is made in the constitution for the establishment of the district courts and for the selection of the judges.⁴ Originally it was provided that the state be divided into five judicial districts in each of which there should be chosen, for a term of four years, a district judge.⁵ The constitution also states that the number of judicial districts in the state may be increased by a two-thirds vote

of each house of the legislature. Judicial districts must be formed of compact territory and must follow county lines. No district judge's office may be vacated by such increase in the number of districts.⁶

As the state of Kansas has increased in population, the number of judicial districts has gradually been increased until there are now thirty-nine districts, comprising from one to seven counties each. Some of the more populous districts contain more than one division of the district court, with a separate judge for each division. There is a total of forty-six district judges in the state.⁷ District judges are chosen at general elections by the electorate of their districts. The salaries of the judges are paid by the state, and not by the counties which they serve. Their compensation is fixed by statute with the constitutional limitation that it never be below \$1,500 annually.⁸ It is now fixed at \$4,000 per year.⁹

Judges of the district courts may be removed by resolution of both houses of the legislature, if two-thirds of the members of each house concur.¹⁰ Vacancies in the office of district judge are filled by the governor, until the next general election.¹¹ Provision is made by law for the selection of a judge pro tempore by members of the bar, to serve in cases in which the district judge is disqualified from serving. Sickness or absence of the regular judge, or his interest in a case at bar are grounds for disqualifying a judge.¹²

The constitution leaves the definition of the juris-

diction of the district court to the statutes, with the exception that provision is made in the constitution for appeals from the justices of the peace and probate courts to be taken to the district courts.¹³ In elaboration of this, the statutes provide that each judicially organized county shall have a district court which shall be a court of record, shall have general original jurisdiction in all matters, both civil and criminal, and jurisdiction in cases of appeal and error from all inferior courts and tribunals. The district court is given general supervisory powers over all inferior tribunals to prevent and correct errors and
¹⁴abuses.

The district court is the only court in the Kansas judicial system with unlimited original jurisdiction. It entertains actions in both law and equity. In more important cases its original jurisdiction is exclusive. In less important cases it may be chosen by litigants in preference to some inferior tribunal which by law would be permitted to hear the case. Its decisions are subject to appeal to the state supreme court, but it is the principal trial court of the state.

In addition to strictly judicial functions, the district court and the district judge, ex officio, exercise certain other powers. Any person dissatisfied with a decision of the county board of commissioners on any claim presented to the county for payment may appeal his claim to the district court. The decision of the court in such a question is final.¹⁵ As has been shown, the district judge

has certain powers of making appointments and filling vacancies in county offices.¹⁶ In a great variety of cases legal actions may be brought in the district court to compel county officials to perform or refrain from performing duties which are imposed upon them or actions which are denied to them by law.

Except in those districts which have more than one division of the court, a single judge will serve an entire district. He is elected by the entire district, and is not really a county officer, although his court is styled the District Court of _____ County. There is, however, in each county, a separate administrative officer of the court known as the clerk of the court. Provision is made in the constitution for the election of a clerk in each county biennially.¹⁷

The clerk of the court is in charge of the records of the district court in each county. He receives cases for filing, issues subpoenas and other writs and processes of the court, collects fees, costs and other charges of the court from litigants, and administers oaths and affirmations to witnesses and jurors. He collects and disburses alimony and support money from ex-husbands to ex-wives and children. He pays witness and jury fees, receives the bonds of persons charged with crime, and is, in short, the chief administrative officer of the court. In two respects he serves the federal government. He receives naturalization papers from prospective citizens, and he issues passports. He keeps a list of the notary

publics of the county and upon demand certifies the genuineness of their seals.

In counties where there is no court calendar or legal news, the clerk is authorized to publish a bar docket at least ten days before the beginning of any term of court, showing the order of appearance of cases on the calendar of the court. To pay for this service he must charge an additional fee of ten cents for each case filed in the court.¹⁸

In counties of more than 60,000 population, the members of the bar of the county may vote to require the annual registration of all attorneys practicing in the district court of the county. Such registration, if it is required, must take place before the fifteenth of January of each year at the office of the clerk of the district court, who is in charge of the register. A fee of ten dollars is charged each attorney, and this fee goes into the support of a county law library. In counties where the state maintains a law library, this plan may not be adopted. The law library, when it is established, however, is in charge of the clerk of the district court. He is required to assess an additional dollar fee against every case filed in the county to add to the support of the library. The county board is required to provide space in the court house for the library, and the clerk of the court is made ex officio librarian of the county law library.¹⁹

The clerk of the district court is paid from the county treasury, and the salary ranges from \$600 in counties of less than 2,000 population²⁰ to \$3,600 in counties of more than 110,000 population having a valuation of more than \$190,000,000.²¹ The salary in the average county is about \$1,200 annually. The clerk of the court may be permitted by the county board to employ clerks or deputies to assist in the work of the office. For paying such assistants the county board may appropriate sums ranging from a maximum of \$300 annually in counties of 6,000 to 15,000 population,²² to nearly \$15,000 annually in counties of more than 110,000 population having a valuation of more than \$190,000,000.²³ In the average county the maximum amount that can be spent for clerk hire is about \$500.

The judge of the district court is authorized to appoint in each county one or more bailiffs to be paid from the county treasury at the rate of \$3 per day and to hold office at the pleasure of the judge. The duties of the bailiff are to preserve order in the court room, to clear the room upon occasion, and to take charge of juries while they are deliberating, showing them to and from the jury rooms, and preventing outsiders from communicating with the jury.²⁴

In each judicial district there is appointed a court reporter whose duties are very important. The reporter must be a trained stenographer, competent to take down and transcribe testimony rapidly and accurately. The reporter

hears and records testimony in cases at trial. These records are of the utmost importance, especially in motions for new trials and in cases appealed to the state supreme court. The court reporter is appointed by the district judge and holds office at his pleasure. The reporter's salary is fixed by law at \$2,600 annually, payable in monthly installments from the state treasury.²⁵

The Probate and County Courts

The state constitution provides that there shall be a probate court in each county of the state, that it shall be a court of record, and that it shall consist of one judge elected biennially in the county.²⁶ The jurisdiction of the court is also defined in considerable detail in the constitution,²⁷ and it includes the following subjects:

1. The right to take proof of wills and testaments and admit them to probate.
2. The right to grant letters testamentary and of administration.
3. The control of acts of executors and administrators.
4. The appointment and removal of guardians for minors, habitual drunkards, and insane persons.
5. The control of masters and apprentices.
6. The hearing and determining of cases of habeas corpus.
7. The exercise of the authority of executors and administrators regarding the estates of deceased persons.

In the exercise of this jurisdiction, the court is required to hold regular terms commencing the first Monday of each month and lasting until the first Monday of the following

month.²⁸

The salary of the probate judge is paid by the county, but is fixed by state law. Salaries range from \$600 annually in counties of less than 3,000 population,²⁹ to \$4,000 per year in counties of more than 125,000 population.³⁰ In the average county the salary is about \$1,300 per year. The probate judge is required to act as his own clerk in all counties of less than 10,000 population. In larger counties he may be allowed sums ranging from \$300 to about \$7,000 for clerk hire.³¹ In the average county he is allowed about \$500.

As we have seen, the general law concerning probate courts gives the court a very limited and specialized jurisdiction, concerned chiefly with three classes of persons: deceased persons, persons of unsound minds, and minors. Ordinarily the court has no general civil and criminal jurisdiction even over cases of limited importance. A permissive statute passed by the legislature in 1923, however, allows any county to establish a county court to be presided over by the probate judge, ex officio. This is a separate court from the probate court, it is not a court of record, and its jurisdiction is limited in criminal matters to such as the justice courts have jurisdiction over, and in civil matters to cases which do not involve more than \$1,000. In the following classes of cases the county court is specifically denied jurisdiction: (1) Cases to recover damages for assault, (2) Actions for

slander or malicious prosecution, (3) Actions against public officers, (4) Actions on contracts for real estate, (5) Actions involving title to real estate, (6) Actions to foreclose on mortgages.³²

The purpose of this permissive act is to allow the establishment of county courts of limited jurisdiction, chiefly for the hearing of small civil actions whose importance hardly justifies a suit in the district court. The civil jurisdiction of the court is more extensive than is that of the justice courts, and the court is much more likely to be in charge of a person of legal training and ability than are the justice courts. The judge of the county court is required to act as his own clerk, and he is governed by the rules of procedure of the justice court in cases involving less than \$300, and by the rules of the district court in more important cases. For serving as judge of the county court, the probate judge receives one-half his regular salary as probate judge in addition.³⁵

The Juvenile Court

In 1905 a law was passed creating a juvenile court in each county of the state and making the probate judge ex officio judge of the juvenile court.³⁴ The jurisdiction of the court is limited to the care of neglected, dependent or delinquent children, under sixteen years of age. The purpose of the court is primarily corrective. It seeks to provide a flexible and sympathetic method of caring for delinquent children. All penalties imposed upon children under sixteen years of age for violation of any state law

or city ordinance may be executed or suspended at the discretion of the probate court.³⁵

To assist in the corrective work of the court, the judge may appoint one or more probation officers, "discreet persons of good character", whose duty it is to investigate complaints against children, to bring them into court for hearings, to represent the children at trials, and to take such charge of children before and after trials as the court shall order.³⁶ Probation officers serve at the pleasure of the judge of the probate court. Their salary is fixed at from two dollars per day to \$2,100 per year, depending upon the size of the county.

Special rules of procedure govern the hearings of the juvenile court. There is, in general, less formality than in ordinary trials, and a more sympathetic attitude toward the persons on trial. Provision is made by law that all persons under sixteen brought to trial before justice or other courts must be turned over to the juvenile court. The jurisdiction of the court extends to the trial of adults charged with contributing to the delinquency of children.³⁷ In such cases the rules of the justice courts concerning misdemeanors apply in the juvenile court. Appeal from decisions of the juvenile court may be taken to the district court.³⁸

Insanity Hearings

Another function of the probate court which is judicial in nature is the conduct of insanity hearings.

Any person may file a complaint or information with the probate court alleging another person to be insane, feeble-minded, an habitual drunkard, or a drug addict. The court is authorized to conduct inquiries into the truth of such allegations, and to make such dispositions as may be necessary to protect the property and well-being of any person found to be insane, feeble-minded, a confirmed drunkard, or a drug addict. Insanity hearings take very much the form of trials. A jury of six persons, one of whom must be a practicing physician, is impanelled to hear the evidence. Witnesses are called and heard. Attorneys may appear to represent the person against whom allegations have been brought. Appeal may be taken from the decision of the probate court to the district court of the county. In such hearings the probate judge may set aside the decision of a jury and order a rehearing, but if the second jury agrees with the first its decision may not be set aside.³⁹

The probate judge today is far-removed from the important figure he was under the "bogus laws" of the first territorial legislature in 1855. Then most of the important functions of the county centered in his office.⁴⁰ Now he is definitely limited by constitution and statute to functions related to children, the dead, and the insane, with a few additional functions such as the issuing of marriage licenses⁴¹ and the hearing, as one member of a commission, of election contests.⁴²

Justice and Other Minor Courts

The state constitution provides that there shall be elected in each township in the state at least two justices of the peace. The number may be increased by the county board upon petition of a majority of the voters in the township.⁴³ The justices of the peace preside over justice courts, and, while they are usually regarded as township officers, they are really a part of the state judicial system. They are much more numerous than any other kind of court and their jurisdiction is very limited.

Justice courts are authorized to try civil cases involving suits for money amounting to not more than \$300.⁴⁴ Their criminal jurisdiction extends to the trial of misdemeanors for which the punishment is a fine of no more than \$500 or a jail sentence of one year, or both.⁴⁵ Justice courts are not courts of record, the justices of the peace need not be trained in law, and their work is really not of very great competence. Probably the most valuable work of the justice courts is in the holding of preliminary hearings to determine whether an accused person shall be bound over for trial before the district court. Justice trials in criminal matters in cases where there is a conviction are likely to be only time and money wasted, for they are so commonly appealed. Some county attorneys have adopted the policy of filing all cases where a jury trial is demanded directly in the district court to avoid the trouble of a justice trial that would very likely be appealed. Nor do justice courts

meet the need for courts of small claims in civil jurisdiction. The fees make them relatively too expensive for litigants with small claims, and the legal ability of the justices is not commonly of a high order.

The executive officer of the justice court is the constable, also an elective officer of the township. Constables are chosen biennially by the electorate of the township. Their duties consist chiefly of serving writs and processes for the justice court, and in so doing, their jurisdiction, like that of the court, is coextensive with the county. Both justices of the peace and constables are paid by fees charged for the various services they perform.⁴⁶ They are in that respect relics of a method of compensating public officers which is now obsolete. A court of small claims is of course very desirable, but it is hardly necessary that they be as numerous as are the justice courts in Kansas. (There are more than 3,000 justices of the peace in the state.) If such minor courts were less numerous they might well be supported out of public funds rather than fees, thus making them much more useful than they now are to the small debtors and others they are supposed to serve.

In certain of the larger cities of the state municipal courts have been established, practically supplanting the justice courts in those cities. Justice courts are established by the constitution so they must be allowed to remain, but in such cities their jurisdiction has been

limited to cases involving less than one dollar.⁴⁷ Most of these municipal courts have been established by special act, but in general structure they are similar.⁴⁸ Smaller cities may and do maintain police courts for the enforcement of local ordinances. In addition, the county board of any county, or the governing body of any city is authorized to establish a "small-debtors court" for the hearing of suits for money in sums of less than twenty dollars. The county board or city governing body establishing the court is authorized to select as judge someone who is of good integrity and who is likely to show a sympathetic interest in the problems of the poor and unfortunate. No fees are charged by the court, and no one is allowed to file a case there who is financially able to appeal to one of the other courts of the state. Hearings are conducted informally, without attorneys, and the judge receives no pay for his services. Appeal from decisions of the court may be taken by the defendant to the district court. Decisions of the court are conclusive upon the plaintiff.⁴⁹

The County Attorney

Law enforcement in Kansas counties is primarily the responsibility of three officers, the county attorney, the sheriff, and the coroner. Of these, the county attorney is probably most important, although the office of sheriff is probably the most sought after office in the county.

The duties of the county attorney are primarily legal. He is both prosecuting attorney of the county, charged with the duty of bringing law violators to trial, and is also the legal advisor of the county officers, and the representative of the county in all civil suits to which it is a party. The civil functions of the attorney as adviser to the other officials of the county and as the representative for the county in law-suits may be very important, but they are not commonly regarded as his chief duties in most Kansas counties. County attorneys are usually elected on the basis of their stand toward the enforcement of some law, most commonly, now, the prohibition law.

In Kansas that is not an unreasonable attitude to take. Since 1864 Kansas has not ordinarily used the grand jury system.⁵⁰ Grand juries may still be summoned in this state, but they are exceedingly unusual. Commonly, in Kansas, criminal actions are initiated not by an indictment brought by a grand jury, but by an information filed by the county attorney.⁵¹ This places the responsibility for seeking out and prosecuting law violators squarely upon the county attorney, but at the same time it allows him a discretion that he might use to shield offenders. The attorney-general of the state exercises limited powers of supervision over the county attorney, and there is the possibility that the grand jury might be called. These act as limitations upon the discretion

of the county attorney, but they are only safeguards and are not the everyday machinery of law enforcement.

The work of investigating complaints, preparatory to the filing of an information, is really police work, which the county attorney is likely to perform in cooperation with the sheriff. Once a charge is filed it is the duty of the county attorney to prepare the prosecution, summoning and examining witnesses, preparing briefs and pleadings, and finally prosecuting the case at the time of trial. An attorney's success in his office is very likely to be judged by the number or percentage of convictions he secures in court.⁵²

A variety of duties fall to the lot of the county attorney as the legal counsel of the county. He is asked for advice upon the duties of the other county officers. He may be asked to interpret new laws of the state. He must defend the county in all suits brought against it, and must prosecute suits in its name. He may be called upon to conduct examinations in taxation and other hearings. In counties of less than 45,000 population (by far the majority of counties of the state) he must sit with the county board while it is allowing claims for money. There he serves as a sort of auditor, and must pass upon all bills before they are allowed.⁵³

In counties of 14,000 population or more the county attorney may be allowed money for clerk hire ranging from \$400 to several thousand.⁵⁴ In certain of the larger counties the county attorney is authorized to appoint one

or more deputies. In counties of more than 110,000 population with three or more divisions of the district court, the attorney is required to appoint a special deputy who is charged with the duty of preparing criminal cases for trial.⁵⁵

In counties of more than 110,000 population the county board is authorized to appoint a county counselor who must be a lawyer, at least twenty-five years of age. He holds office at the discretion of the county board and is charged with the exercise of the functions of the county with regard to civil actions. The county attorney is relieved of all responsibility for the conduct of civil actions, except tax-foreclosure suits in counties of more than 120,000 population. The salary of the counselor is fixed by law at \$2,000 annually.⁵⁶

The county attorney receives as compensation for his services, a salary ranging from \$600 in counties of less than 2,000 population⁵⁷ to \$4,000 per year in the largest counties.⁵⁸ The average is about \$1,500 per year. In addition the county attorney is allowed to keep all fees paid to him in the prosecution of any case under the prohibitory laws of the state.⁵⁹ This includes a fee of twenty-five dollars for each count on which a liquor violator is convicted, a device calculated to encourage the county attorney to prosecute violators of the liquor law.⁶⁰ The county attorney is also permitted to act as attorney in civil actions for private individuals pro-

vided such actions do not rest upon the same set of facts as some criminal prosecution he is conducting.⁶¹

The Sheriff

The sheriff is the conservator of the peace in the county. His functions are really two-fold. He is first a police officer, charged with keeping the peace, with making arrests, often after extensive criminal investigations, with confining prisoners, and with assisting in gathering evidence in support of their prosecution. In the second place, he is the executive officer of the courts of the county, with the duty of serving writs and processes of the courts, subpoenas, summonses, etc. and of executing judgments of the court against property. In addition, he is collector of delinquent personal property taxes.

A sheriff is elected biennially in each county in the state. He is required to appoint a chief deputy or undersheriff who serves at the pleasure of the sheriff.⁶² He may appoint such other deputies as he desires, and may deputize persons for particular duties.⁶³ In most counties many people are deputized who do not work full time as deputies. Police officers and marshals of towns outside the county seat are very commonly deputized. In counties of more than 65,000 population special highway deputies may be appointed to patrol the highways of the county.⁶⁴

The sheriff is required to attend all terms of court in the county, either in person or by deputy.⁶⁵ He is required to serve writs and papers for the courts.

He is liable under his bond for the proper conduct of himself and of his deputies. Even after his death, resignation, or removal he is liable under his bond for the proper conduct of his deputies until the completion of the term for which he was elected.⁶⁶

The compensation of the sheriff is in the form of a fixed annual salary, plus a mileage allowance for the distance necessarily traveled in serving processes of the court and in transporting prisoners,⁶⁷ and an allowance for feeding prisoners held in the jail.⁶⁸ The annual salary of the sheriff in Kansas ranges from \$1,350 in counties of less than 2,000 population⁶⁹ to \$4,000 in counties of more than 125,000 population.⁷⁰ The allowance for deputies ranges from \$200, to more than \$12,000 in the largest counties. The salary in the average county is about \$1,500 annually.

County Jails and Work Farms

Every county in Kansas is required by law to maintain a county jail at the county seat. The sheriff is required in person or by deputy to keep the jail. He must keep separate cells for the sexes and must supply food, drink and fuel to the prisoners. At the beginning of each term of court the district judge and the county attorney are required to inspect the jail and report in writing to the county board. Any grand jury in session is also required to inspect the jail. It is the imperative duty of the county board to make any repairs.

recommended by the grand jury.⁷¹

The sheriff must be allowed a reasonable amount by the county for keeping each prisoner. The county is authorized to receive prisoners from other states and counties or from the United States government, and to make a reasonable charge for keeping them. The cost of keeping a prisoner confined under a civil writ may be charged against the plaintiff in any case. If any judge decides that the jail of his county is not a fit or proper place to keep a prisoner he may commit him to the jail of a nearby county, to be kept at the cost of the county from which he is sent. Violators of city ordinances in cities of the second and third class may be kept in the county jail, at the expense of the city.

In certain counties special deputies to serve as jailers may be appointed. In counties of more than 35,000 population the county board may authorize the appointment of matron of the jail who has the power and authority of a deputy sheriff. Such matrons are in charge of all women arrested and of the women's portion of the jail. No woman related to the sheriff by blood or marriage may be appointed to the position of matron.⁷²

In any county of the state or in any first class city, the electorate of the county or city may, by a majority vote, authorize the establishment of a municipal farm home. Any first class city and the county in which it is situated may jointly establish and maintain such

home. This municipal farm home is to serve as a place to confine persons convicted of offenses less than a felony, while they are working out fines or imprisonments. A part of their earnings must be set aside to aid in the support of any dependents they may have, and the remainder must go to the county fund in payment of their fines. Such homes are subject to the control of the governing body of the city or county establishing them.⁷³

The Coroner

The coroner in Kansas is a police officer of specialized functions. His principal duty is the conducting of inquests over the bodies of persons who have died in the county from unknown or violent causes. He conducts his investigations through the agency of the coroner's inquest and is assisted by a coroner's jury of six members. The jury is required to view the body of the person whose death is being investigated. Witnesses may be subpoenaed by the coroner, oaths administered to them and their evidence heard at the inquest. Testimony may be reduced to writing at the order of the coroner, or a stenographer employed to take down the testimony as it is presented. Attorneys may be allowed to represent persons likely to be concerned in the decision of the jury, and the inquest may have the appearance of a trial; but the discretion of the coroner in admitting examination is very great.⁷⁴

The purpose of the coroner's inquest is to

determine the cause of the person's death and to determine whether any crime has been committed. If a verdict of the coroner's jury implicates some person at the inquest, his immediate arrest may be ordered by the coroner. If someone is implicated who is not present, a warrant, having the same force as the warrant of a justice of the peace, must be issued by the coroner. To assist in the arrest of any person so charged, the verdict of the coroner's jury may be kept secret until after the arrest is made.

A large part of the work of the coroner, in addition to investigating the possibility of crime, is concerned with the care of the bodies of unidentified dead. Frequently the coroner may find relatives to claim the bodies of such persons, but where relatives cannot be found he is required to give the persons a decent burial. The county board is required to pay the expense of such burials, if they deem the amount reasonable.⁷⁵

Coroners may, if they or their juries desire it, summon one or more physicians to make investigations of bodies over which they are making inquisition. Very commonly, however, the coroner himself is a physician. The election of a physician to that office has become a tradition in most localities. For that reason, perhaps, the police character of the coroner's office is frequently lost sight of. Coroners in counties of more than 130,000 population are authorized to appoint two deputies.⁷⁶ In

any county, any justice of the peace may serve for the coroner in relation to dead persons.⁷⁷

The general police functions of the coroner are seldom exercised, and are probably little known by the ordinary citizen. The coroner is authorized by law to act as sheriff in any organized county in which there is no sheriff. When the sheriff is committed to the county jail, the coroner is required to act as jailer.⁷⁸ Naturally, those duties are not ordinarily of much importance.

In Kansas counties of less than 70,000 population the coroner is paid by the county board at the rate of \$3 per day for each day spent in holding inquests. He is also allowed such fees as the justices of the peace are allowed for criminal cases, and is given ten cents expense allowance for each mile necessarily traveled in the performance of his duties.⁷⁹ In counties of 70,000 to 90,000 population (Shawnee) the coroner is allowed a salary of \$1,200 per year, expenses, and mileage at the rate of five cents per mile.⁸⁰ In counties of more than 90,000 population the coroner is paid a salary of \$1,500 annually,⁸¹ and in counties of more than 110,000 population having a valuation of \$200,000,000, the salary is fixed by law at \$1,800 per year.⁸²

Law Enforcement Procedure

In civil actions, except in cases to which the county is a party, its responsibility is not very great.

It is required to furnish a court-room, and furnishings, and to pay the expenses of the bailiff and the sheriff or his deputy for attending the court. Civil actions are commonly controversies between individuals or groups of individuals, private in character, and, theoretically, at least, paid for by the litigants themselves. The fees paid in a civil case may not actually cover the costs of a civil action, but they are intended to, and they at least approximate paying them. In criminal actions, however, the state, through the agency of these various county officials discussed above, is directly responsible. The county, too, is responsible in that it must pay a large measure of the expense of criminal trials.

With the risk of becoming lost in the intricacies of court procedure, it would perhaps be helpful to outline the work of the various law enforcement and judicial officials of the county in a criminal prosecution. The action may be said to begin with the arrest of some person by a peace officer, such as a sheriff or his deputy. This arrest may be made upon suspicion, or in accordance with the terms of a warrant issued by the judge of some court in the county. The county attorney of the county must then prepare a formal charge against the person and take him before a magistrate, commonly a justice of the peace, for a preliminary hearing. The purpose of this hearing is to determine whether or not there is sufficient evidence to warrant holding the per-

son for trial. The defendant may waive the preliminary hearing, in which case he is bound over directly for trial. The magistrate at the preliminary hearing may release the person, admit him to freedom on bail, or commit him to jail.

The county attorney, when a person has been bound over for trial, must prepare an information, formally charging him with the offense, and file it with the clerk of the district court. The person so charged is then arraigned before the judge of the court and is given an opportunity to plead guilty or not guilty to the charge against him. If he pleads not guilty his case is placed upon the docket of the court for trial. He is entitled to counsel, and if he cannot afford an attorney, one may be selected by the court, and paid by the county.⁸³ He is also entitled to a jury trial, before a petit jury of twelve members, selected from the county and paid by the county. The sheriff is in charge of the defendant during the trial, the county attorney must prepare and present the prosecution, the judge must conduct the trial, the bailiff must maintain order, the clerk of the court must keep the records of the case, the reporter must copy the testimony; and the county must pay the expenses. It is true that costs are often assessed against defendants, especially in misdemeanors, where the penalty, or part of it, is a fine; but in many cases such costs are not collectible, and if they were all collected they would not begin to cover the expense of criminal prosecutions.

The Selection of Jurors

Jurors in most Kansas counties are selected by the county clerk from jury lists prepared by the various city mayors and township trustees of the county. These lists must be prepared annually in the month of April and must include the names of all eligible persons not exempted from jury service. Persons who did jury service in the preceding year may not be included in the lists. From these lists the county clerk prepares slips of paper, each bearing a name, and puts them in a "jury box" from which they are subsequently drawn by the clerk in the presence of the sheriff and two justices of the peace of the county.

Twelve names must be drawn from the jury box by the county clerk, at least thirty days in advance of any term of court. More may be drawn, up to twenty-four in number, upon order of the district judge. Twenty days before court convenes these jurors must be summoned by the sheriff by registered letter. If within ten days of the beginning of the term the return receipt from the letter has not been returned by any juror, he must be notified⁸⁴ by the sheriff.

In counties of more than 90,000 population, jury lists are prepared by the judges of the district court and of other courts of general jurisdiction in the county, and are revised by them at least once each year. The drawing of the names of jurors to be impanelled for service is

done by the district judge or by someone in his presence. Special jury clerks are appointed by the district judges in such counties, to take charge of the summoning of jurors.⁸⁵ In counties of more than 100,000 population, these jury clerks are required to give a duplicate jury list to the sheriff, who in person summons the jurors.⁸⁶

Jurors are paid from the county treasury. Jurors in the district court are paid \$3 per day and are allowed mileage at the rate of five cents for each mile necessarily traveled in going to and from the court.⁸⁷ Jurors in cases under the jurisdiction of the probate or juvenile courts are allowed \$2 per day and five cents per mile.⁸⁸

CHAPTER X

MINOR COUNTY FUNCTIONS

The Educational Functions of the County

The county does not hold an important position with regard to education. Schools are administered under the direction of locally chosen school boards, elected from special school districts. These, rather than the counties or townships, form the primary educational units of the state. The state government exercises extensive powers of supervision and direction over education, but the local agencies of the general government, the cities and counties, have little control over educational functions.

Such educational functions as the county does exercise are centered principally in the county superintendent. A county superintendent is elected biennially in each county of the state. In the performance of his duties he is held responsible in large measure to the state department of education, but his salary is paid locally, and he can be regarded as a county officer. The principal duty of the county superintendent is to visit the district schools of the county, to supervise the work of the teachers, to offer advice and suggestions to teachers and school boards, to examine the accounts and records of the various districts, to assist school boards

in securing teachers, and to perform a variety of similar functions. The work of the superintendent is confined almost entirely to the rural schools of the county. He is held responsible by the state board for making extensive reports to the board of the number of visits he has made, the condition of the schools, the number of teachers, etc. On or before the fifteenth of October he is required to make a comprehensive report to the state superintendent of education.¹

Annually, the county superintendent is required to hold a convention of district school boards.² He is required to hold an annual normal institute lasting from five to twenty days.³ The institute and the board convention are commonly held at about the same time in the late summer, in preparation for the opening of the county schools in September. As ex officio chairman of the county board of examiners, the county superintendent conducts examinations for county teacher's certificates permitting individuals to teach in the schools of the county. Even in this function the supervision of the state board of education is evidenced in the fact that the examination questions are prepared by the board.⁴

The county superintendent is authorized to divide the county into school districts, and to change such districts when necessary. Changes can be made, however, only after a hearing has been held, with the further restriction that no district may be reduced to the point that will

include fewer than fifteen persons of school age or will have a bonded indebtedness of more than five per cent of its taxable valuation. Appeal from the decision of the county superintendent in establishing a school district may be taken to the county board. The board may, if it deems it desirable, disregard the restrictions as to school population and valuation.⁵

The county annually receives from the state treasurer, a sum of money to be paid into the county school fund.⁶ To this is added such money as is collected by the county in fines, forfeitures, and from a few other similar sources.⁷ This county school fund is apportioned to the schools of the county by the county superintendent. Counties which adopt the so-called "Barnes Law" statute are authorized to levy a tax toward the support of high schools in the county.⁸ Until 1923, a great many counties maintained county high schools, but that year all county high schools were replaced by community high schools which comprise all the territory in the county in which they are situated not included in some other high school district.⁹

County superintendents in the smaller counties of the state receive salaries of four dollars per day, with the maximum annual salary fixed according to the number of persons of school age there are in the county. Thus is counties having a school population of less than 500 the superintendent may be paid for only 180 days per year. In larger counties an annual salary is paid, but this also varies according to the school population.¹⁰ An allowance

of \$2 per year is made for visiting each teacher in the county.¹¹ In Wyandotte county the superintendent receives a salary of \$1,800¹² annually and in Sedgewick a salary of \$3,000,¹³ the highest superintendent's salary in the state. In both of these largest counties an allowance of \$600 is made for maintaining an automobile for the superintendent.

County Libraries

While it is not exactly an educational function, the establishment of public libraries is certainly an important adjunct to educational work. In 1921 a permissive statute was adopted allowing any county to establish a county library, or to rent a library already established, and to levy a tax of not more than .5 mills annually in support of the library. This must be approved by a majority of the voters of the county living outside any city or other unit in the county already maintaining a public library. A petition signed by ten per cent of the taxpayers of the county may compel the submission of the question, or it may be submitted by the county board without a petition.

Under the terms of this act, county library affairs must be conducted by a special library board of three members, appointed by the county board, bonded, and serving without compensation other than necessary expenses. The board is authorized to buy or lease lands, to erect a building, to appoint a competent librarian, to have charge of all books and equipment, and to make

needful rules for the conduct of the library. It may arrange with any township, city or adjoining county to use a library maintained therein, in return for a share of the expenses, or it may arrange to furnish service from the county library that is established to some adjoining county or to any unit of government within the county. The county library levy is made by the county board, upon recommendation of the library board.¹⁴

In 1930 only two counties had availed themselves of the privileges conferred by this act. Pratt county had adopted the policy of cooperating in the support of the Pratt city library, and Scott county had established the only strictly county library in the state.¹⁵ Efforts are being made by the state library association to encourage the establishment of other libraries under the terms of this statute.

In addition to public libraries of a general character, certain counties are authorized to establish special professional libraries. County law libraries for use of the registered attorneys of the county are discussed elsewhere in this study.¹⁶ County medical libraries may be established in two counties of the state, those with a population of more than 125,000. Such libraries are designed for public use, and they are financed out of a special medical library fund made up of fees charged physicians for registration within the county.

Every practicing physician in the county is required

to register with the county clerk and to pay an annual registration fee of \$10. With the income from these fees the county board is required to establish and maintain a county library at the courthouse or in some other building provided by the county.¹⁷

The Register of Deeds

The keeping of records relating to the transfer and titles of real estate is a special county function, and is performed by a special elective officer known as the register of deeds, whose duties are defined in considerable detail in the statutes. His principal work is the recording of deeds, mortgages and other similar instruments. He is required, upon the receipt of an instrument, to enter it in the receiving book, listing the time of reception, the names of the grantor and the grantee, the name of the person to whom the instrument is delivered, and the fees received. He must then copy the instrument in its entirety in the proper record book for instruments of that character, and is expressly required to proof-read the record by comparison with the original instrument.

Each volume of the records must be indexed, and, in addition, the register must keep a general index of all the records, with all instruments listed once according to the name of the grantor and in another section according to the name of the grantee. This general index includes, in separate columns, the time of reception, the names of grantor and grantee, the nature of the instru-

ment indexed, a description of the property concerned, the volume and page where the instrument is recorded, and any remarks concerning the instrument that ought to be noted. The board of county commissioners may order the register to furnish, in addition to the general index, a numerical index listing the same information for the use of the county. The register is also required to keep a book of plats of all the towns and villages in the county.¹⁸

While the service of the register is of value to the public, it is more directly valuable to the persons who avail themselves of it, and, as a consequence, a fee, designed to cover the cost of the service, is charged for it. For many years the compensation of the register was derived entirely from the fees of his office, but he is now paid a salary which is fixed by statute. Whether the fees collected by the registers of deeds in most counties pay the costs of the office or not is a question which cannot be answered for lack of information, but it is probably true that the office more nearly pays for itself than do most of the fee-collecting offices of the county. The mortgage registration tax, as has been stated elsewhere, is collected by the register of deeds, but the income derived from that source can hardly be counted in determining the income of the office from fees, for the mortgage registration fee is really a tax, and not a fee for services.¹⁹

A trace of the fee system is retained in the office of register of deeds in counties of less than 14,000

population, where the register is paid a salary of from \$900 to \$1,400 per year, and is allowed to keep half the fees of his office in excess of \$350 per quarter.²⁰ In larger counties a salary alone is given the register, and the salary ranges from \$1,500 in counties of from 14,000 to 15,000 population,²¹ to \$3,600 in counties of more than 110,000 population with a valuation of \$200,000,000.²² In counties above 15,000 population clerk hire may be allowed the register to the amount of from \$600 to \$2,200 per year.

The County Surveyor

In litigation involving the title to land, in the recording of land titles, in the laying out of towns and villages and of roads and streets, it is necessary to employ the services of a competent and impartial surveyor. In the early period of statehood in Kansas every county in Kansas maintained a county surveyor, for the work of the office was relatively much more important in those days of land-booms, of establishing new towns and opening up new farm lands than it is now. At the present time only the larger counties of the state maintain a county surveyor. In all except the three largest counties of the state the functions of the county surveyor are performed by the county engineer.²³

It is the duty of the surveyor, or engineer acting as surveyor, to survey property lines upon the request of property-owners or at the order of the court in case of controversy, to establish or re-establish section

corner-stones, to lay out roads and streets, and in so doing to make an accurate impartial survey and to keep a complete record of it. For such services, when performed for private citizens, the surveyor charges fees as fixed by statute. Formerly these fees, plus a per diem allowance for services performed for the county, constituted the compensation of the surveyor. Now, in the three counties having a separate surveyor, he is paid a salary set by law at \$1,800 per year.²⁴

The Promotion of Agriculture

The county is authorized, in a number of statutes, to perform functions in aid of agriculture. Because of the predominately rural character of most of the counties of the state, the county is the logical agency to exercise such functions. County fairs, although they seem to be losing popularity in many sections of the state, are still held. The statutes in scattered provisions authorize counties to give financial aid to county fair associations, to maintain county fairs under certain conditions, or to join with neighboring counties in establishing and maintaining district fairs. Special levies for fair purposes may be made, and fair associations in certain counties may exercise the right of eminent domain.²⁵

Another function in the interest of agriculture, in which the county works in cooperation with the state and national governments, is the maintenance of the county farm bureau, with its county agent, its home demonstration agent,

its 4H club work, etc. The statutes provide that any county farm bureau having as its membership 25 per cent of the bona fide farmers of the county, or as many as 250 farmers, and having funds in the bank to the amount of \$800, may apply to the county board for financial assistance. Under such conditions the county board must appropriate not less than \$1,200 per year to the support of the farm bureau. Any two counties in the western third of the state may establish a joint farm bureau. The county board in any county giving aid to the farm bureau, may levy a special farm bureau tax.²⁶

The farm bureaus also receive federal and state aid, and perform their work under the direction of the U. S. Department of Agriculture, the state board of agriculture, and the Kansas State College. The purpose of the bureau is to teach farmers improved scientific methods of production and marketing, to introduce better quality seed and live-stock, to aid farm women in home-making, to develop well-trained farm youth, and, in general, to bring to the farm the benefits that science can confer upon agriculture.

How much these benefits are appreciated, and whether the farm bureau has disadvantages that it is not its purpose to have, are questions in controversy. Not more than half the counties of the state maintain farm bureaus, and in recent efforts to bring about reduced county expenditures, the farm bureau has been vigorously

attacked in many counties of the state. One view, which seems to be gaining adherents, is that the farm bureau, which in organization is a private association, has no more right to ask public support than has the Grange or the Farmer's Union, or than has a chamber of commerce in a city, and that in a few years the farm bureau will cease to command county appropriations.

County road overseers are required to destroy all noxious weeds along the highways, along railroad right of ways, and in unoccupied fields in which the leasees or owners neglect to destroy the weeds. The cost of destroying weeds on private property may be assessed against the property and collected as are taxes.²⁷ On petition of twenty per cent of the resident landowners of the county the county board may take special steps to eradicate field bindweed, and may purchase and distribute free the materials necessary in this work.²⁸

Upon petition of fifteen landowners of the county the county board is required to purchase and distribute free poisons for use in the destruction of grasshoppers.²⁹ County boards are required to pay bounties for scalps of gophers and coyotes and for the heads of crows killed within the county, and may pay a bounty for jackrabbit scalps. The board may, at its discretion, employ competent persons to eradicate crows, coyotes, gophers, jackrabbits, etc. within the county, and may purchase poison for that purpose at cost from the Kansas State

College. To pay bounties and to carry on a campaign of eradication the board may levy a special tax of not more than one-eighth mill.³⁰

Counties of less than 15,000 are authorized, by a unanimous vote of the county board, to appropriate not more than \$2,500 for the purchase of land and the drilling of test artesian wells.³¹ In any county, when the board is petitioned by a majority of the voters of the county, it may appropriate not more than \$10,000 out of the general fund of the county for the drilling of artesian wells upon a tract of land that has been donated to the county for that purpose.³² In counties containing more than ten artesian wells the county board must call a meeting of the owners of the wells for the purpose of forming a county artesian well association.³³

The State Census

An activity that is probably as closely related to the promotion of agriculture as to any other county function is the taking of the annual state census by the various deputy assessors, working under the direction of the state board of agriculture. The county clerks are required to furnish the deputy assessors with blanks supplied for census-taking purposes by the state board. The assessors are required to gather the information requested by the blanks in the course of their calls upon the inhabitants of the counties in making the annual assessment of property.

The census is, first of all, an enumeration of the inhabitants of the county, with information concerning their ages, race, marital condition, etc., but the largest part of the census report consists of agricultural statistics. A variety of information in the fields of agriculture, horticulture, stock-raising, and apiculture must be collected by the assessors. A census of factories, stone-quarries, mines, etc. must be taken. An enumeration of libraries, newspapers, churches, and schoolhouses must be made. All of this must be done in connection with the main task of assessing property. No special compensation is allowed the assessors for the work of taking the census.³⁴

Miscellaneous Functions

The enumeration of county functions which constitutes the major portion of this study shows the interests of the county to be both varied and important. But even this extensive enumeration does not exhaust the list of county activities. For example, any county in the state may, with the approval of the electorate, establish a county park and recreation ground, to cost not more than \$15,000.³⁵ Counties are authorized to remove signboards, hedge fences and board fences exceeding four feet in height from the vicinity of any railroad crossing or crossroad on a public highway.³⁶ Certain classes of counties have been authorized to build sidewalks, to organize sewer

districts within the county, to provide sewers and sewage disposal plants, to organize fire protection districts within the county, and to perform other functions for the improvement of the county.³⁷ Thus the variety and extent of the county's interests are extended. It becomes increasingly evident that the part the county plays in governmental activity is an important one.

NOTES

CHAPTER I

1. Wilder, D. W., *Annals of Kansas*, p. 75 ff.
2. *General Laws of Kansas Territory*, 1859, Ch. 89.
3. *Ibid.*
4. Much of this material on the history of the establishment of Kansas counties is based upon a study prepared in 1903 by Helen G. Gill as a thesis for the M. A. degree in history at the University of Kansas. The study, which includes a series of maps showing the various stages in county establishment, was published in Vol. 8, *Kansas Historical Society Collections*.
5. Gill, Helen G., *op. cit.*, p. 8-9 and Map VI.
6. *Ibid.*, p. 19.
7. Except where otherwise noted the figures and calculations in this section dealing with area, population and population density of counties, are based upon Bureau of Census *Population Bulletins*, 1930.
8. Federal Board of Surveys and Maps, quoted in *World Almanac*, 1931, p. 485.
9. Wager, Paul W., *County Government and Administration in North Carolina*, p. 33.
10. Fairlie and Kneiser, *County Government and Administration*, p. 65.
11. All except two are in the western one-third of the state, and those two are west of the center.
12. For example: Hamilton county, New York; Alpine and Inyo counties, California; Collier county, Florida; Cook and Lake of the Woods counties, Minnesota; and Cameron county, Louisiana.
13. State Tax Commission, *Eleventh Biennial Report*, 1927-28.

14. Sedgewick, Wyandotte, Shawnee, Reno, Butler, Cowley, Montgomery, Sumner, Saline, Greenwood.
15. The population of Greenwood county is 19,235; its valuation, \$63,783,190. Leavenworth has a population of 42,783 and a valuation of \$46,296,729.

CHAPTER II

1. Const. of Kansas, Art. IX, Sec. 1.
2. The figures here quoted are based upon reports of county tax levies in the State Tax Commission Eleventh Biennial Report, 1927-28.
3. The consolidation of Garfield and Finney counties was effected by means of a special act of the legislature (Laws 1893, Ch. 98) but this action would not be a precedent for other consolidations, for the reason that Garfield county never legally existed, since it had less than the legal minimum area. Although the county in fact had county officers and organization, in the eyes of the law it was unorganized territory subject to the control of the legislature. See *State v. Garfield County*, 54 K. 372.
4. R. S. 1923, Secs. 18-202 to 212.
5. Kansas City Times, Jan. 8, 1932.
6. Const. of Kansas, Art. IX, Sec. 1.
7. R. S. 1923, Secs. 19-1601 to 1630.
8. In 1925, an act was passed authorizing the county board of any county of from 3,000 to 3,450 inhabitants, according to the last preceding census of the county assessors, to call a special election for the relocation of the county seat, upon the presentation of a petition signed by only a majority of the electors of the county. A three-fifths majority is required to carry such an election. R. S. 1923, Supp. 1931, Secs. 19-1602.
9. R. S. 1923, Sec. 19-1609.
10. R. S. 1923, Secs. 25-1501 to 1510.

CHAPTER III

1. Terr. Laws, 1859, Ch. 89.

2. Terr. Laws, 1855, Ch. 44. Par. 28.
3. Terr. Laws, 1855, Ch. 44. Par. 8
4. Ibid., Par. 9-11.
5. Terr. Laws, 1855, Ch. 155., Par. 1.
6. Terr. Laws, 1855, Ch. 44, Par. 33, 42.
7. Terr. Laws, 1855, Ch. 134.
8. Terr. Laws, 1855, Ch. 150, Par. 3.
9. Ibid., Par. 4.
10. Ibid., Par. 5.
11. Terr. Laws, Ch. 32, Par. 2. See also Terr. Laws 1855, Ch. 44, Par. 34 where the appointment of the treasurer by the county board is provided for.
12. Terr. Laws, 1855, Ch. 44, Par. 33.
13. Terr. Laws, 1855, Ch. 137, Art. II, Par. 1.
14. Terr. Laws, 1855, Ch. 27, Par. 1.
15. Terr. Laws, 1855, Ch. 154, Par. 1.
16. Terr. Laws, 1855, Ch. 10.
17. MS. The Development of Local Government in Kansas., Shively, Charles Arthur, Master's Thesis, University of Kansas, 1907.
18. See the acts referred to above relating to these various offices.
19. Terr. Laws, 1858, Ch. 71, Par. 41.
20. Terr. Laws, 1858, Ch. 13, Par. 9.
21. Ibid., Par. 18.
22. Ibid. Par., 40.
23. Terr. Laws, 1855. Ch. 137, Art. II, Par. 31.
24. Terr. Laws, 1858, Ch. 66.
25. Ibid., Par. 36.
26. Terr. Laws, 1858, Ch. 67.
27. Terr. Laws, 1858, Ch. 66, Par. 82ff.

28. Terr. Laws, 1858, Ch. 13.
29. Terr. Laws, 1858, Ch. 5.
30. Terr. Laws, 1858, Ch. 8, Par. 13ff.
31. Terr. Laws, 1858, Ch. 13, Par. 37.
32. Terr. Laws, 1858, Ch. 5. Par. 7-9.
33. Terr. Laws, 1859, Ch. 89.
34. Terr. Laws, 1859, Ch. 42.
35. Terr. Laws, 1859, Ch. 130.
36. Terr. Laws, 1859, Ch. 42.
37. Terr. Laws, 1859, Ch. 41, Par. 25.
38. Terr. Laws, 1859, Ch. 66, Par. 5.
39. Terr. Laws, 1860, Ch. 28, Par. 9-11.
40. Ibid., Par. 121-123.
41. Ibid., Par. 114.
42. Fairlie and Kneier, County Government and Administration, p. 380.
43. Terr. Laws, 1860, Ch. 28, Par. 43.
44. Terr. Laws, 1860, Ch. 98, especially Par. 3-7, 21.
45. Laws, 1861, Ch. 25.
46. Anderson and Legman, County Government in Minnesota, p. 24-5.
47. J. Ritchey, 41, farmer, from Topeka, chairman;
E. Moore, 38, manufacturer, Holton; B. F. Simpson,
23, lawyer, Paola.
48. W. McCulloch, 44, farmer, Council Grove.
49. F. Brown, 33, manufacturer, Leavenworth.
50. T. S. Wright, 50, lawyer, Granada, Nemaha County.
51. H. D. Preston, 28, farmer, Burlingame.
52. Proceedings of Wyandotte Convention, p. 189. All references here are to the "Kansas Constitutional Convention," a reprint of the proceedings and debates of the convention which framed the constitution of Kansas at Wyandotte in July, 1859; Kansas State Printer, Topeka, 1920.

53. Ibid., p. 196.
54. Ibid., p. 196-200.
55. Ibid., p. 199.
56. Ibid., p. 222.
57. Ibid. p. 225-228.
58. Ibid., p. 222, 228.
59. Ibid., p. 228.
60. Ibid., p. 373.
61. Ibid., p. 549.
62. Constitution of Kansas, Article IX (as originally drafted -- see Wyandotte Constitutional Convention, p. 574ff)
63. Constitution of Kansas, Art. II, Section 21.
64. Wyandotte Constitutional Convention, p. 134.
65. Ibid., p. 148-49.
66. Loc. cit.
67. Wyandotte Constitutional Convention, p. 152-3.
68. Perdue, Rosa M., The Sources of the Constitution of Kansas, Kansas Historical Collections, v. 7, p. 130-151. Reprinted in The Wyandotte Constitutional Convention, p. 676-696. This reference is to page 689.
69. Perdue, op. cit., p. 682.
70. Ibid., p. 684.
71. Laws, Ch. 31, Section 2.

CHAPTER III

1. Compiled Statutes of Kansas, 1862.
2. General Statutes of Kansas, 1868.
3. See page 34 above.
4. Terr. Laws, 1858, Ch. 71, Par. 6.

5. Laws, 1869, Ch. 30, Sec. 76.
6. Laws, 1869, Ch. 30, Sec. 2.
7. Terr. Laws, 1858, Ch. 66, Sec. 17.
8. Terr. Laws, 1858, Ch. 66, Sec. 37.
9. G. S., 1868, Ch. 107, Art. 9; continued under act of 1869.
10. Laws, 1869, Ch. 30, Sec. 78.
11. Laws, 1907, Ch. 408, Sec. 18.
12. Laws, 1907, Ch. 408, Sec. 19.
13. Laws, 1907, Ch. 408, Sec. 19.
14. Laws, 1907, Ch. 408, Sec. 3.
15. Laws, 1907, Ch. 408, Sec. 12.
16. Laws, 1909, Ch. 251, Sec. 3.
17. Ibid.
18. See Chapter VI below.
19. Terr. Laws, 1860, Ch. 28, Sec. 11.
20. Wyandotte Const. Conv., p. 585.
21. Laws, 1861, Ch. 32, Sec. 2.
22. Laws, 1867, Ch. 25, Sec. 1.
23. Ibid.
24. The early biennial reports of the state board of agriculture give the decennial census figures of the U. S. government for Kansas counties.
25. G. S., 1868, Ch. 25, Sec. 9.
26. Ibid., Sec. 4 of bill appended to Ch. 36, p. 428.
27. Ibid., Ch. 25, Sec. 10.
28. Leavenworth v. Latta, (1869), 5 K., 688.
29. Laws, 1871, Ch. 74, Sec. 1.

30. Reports of Board of Agriculture, cited above.
31. Laws, 1871, Ch. 74, Sec. 2.
32. R. S. 1923, note to Sec. 3, Art 9 of Kansas Constitution.
33. Keating v. Marble, 39 K. 374, (1888)
34. G. S., 1901, Par. 1611.
35. R. S., 1923, Sec. 3, Art. 4 of Kansas Constitution, and note.
36. Laws, 1861, Ch. 32, Sec. 1,2.
37. Laws, 1878, Ch. 140.
38. R. S., 1923, Sec. 2, Art. 4.
39. R. S., 1923, Sec. 19-202.
40. See for example the Terr. Laws, 1860, Chaps. 29 to 59.
41. See note to Sec. 17 of Art., Const. of Kansas, in R. S. 1923.
42. State ex rel. v. Hitchcock, 1 K. 172 (1862).
43. Hughes v. Milligan, 42 K. 396 (1889); see also State ex rel. v. Sanders, 42 K. 228; City of Wichita v. Burleigh, 36 K. 34; and Commissioners of Barber Co. v. Smith, 48 K. 331.
44. In number of acts passed in the years from 1861 to 1906, special acts greatly exceed general acts referring to counties.
45. Art. II, Sec. 17, Const. of Kansas.
46. See p. 54 above.
47. R. S., 1923, Sec. 19-1514.
48. R. S., 1923, 1931 Supplement, Sec. 19-401.
49. G. S., 1868, Ch. 25, Sec. 14,15.
50. G. S., 1868, Ch. 39, Sec. 7.
51. G. S., 1868, Ch. 39.
52. Laws, 1875, Ch. 96.

53. Laws, 1875, Ch. 93.
54. Laws, 1875, Ch. 99.
55. Laws, 1875, Ch. 95.
56. Laws, 1875, Ch. 99.
57. Laws, 1897, Ch. 131, Sec. 7.
58. Ibid., Sec. 9.
59. Laws, 1897, Ch. 131, Sec. 8, 12, 13.
60. G. S., 1868, Ch. 39, Sec. 7.
61. Laws, 1913, Ch. 197.
62. Ibid., Sec. 6.
63. Ibid., Sec. 5, 8-12.

CHAPTER V

1. R. S. 1923, Secs. 19-201 to 202.
2. R. S. 1923, Sec. 19-205.
3. Const., Art. 4, Sec. 2.
4. R. S. 1923, Sec. 19-202.
5. R. S. 1923, Sec. 19-203.
6. R. S. 1923, Sec. 19-233.
7. R. S. 1923, Sec. 19-219.
8. R. S. 1923, Sec. 19-218.
9. R. S., 1923, Sec. 19-204.
10. Ibid.
11. R. S. 1923, Secs. 19-225.
12. R. S. 1923, Sec. 19-209.
13. R. S. 1923, Sec. 19-206.
14. R. S. 1923, Sup. 1931, Sec. 28-121.
15. Ibid.
16. Ibid.
17. R. S. 1923, Sec. 28-312.

18. R. S. 1923, Sup. 1931, Sec. 28-312a.
19. R. S. 1923, Sec. 19-101.
20. R. S. 1923, Sec. 19-103.
21. R. S. 1923, Sec. 19-105.
22. R. S. 1923, Sec. 19-212.
23. R. S. 1923, Sec. 19-213.
24. R. S. 1923, Supp. 1931, Sec. 68-406.
25. R. S. 1923, Sec. 19-208.
26. R. S. 1923, Sec. 19-608.
27. R. S. 1923, Secs. 19-221, 228.
28. R. S. 1923, Supp. 1931, Secs. 68-501 to 552.
29. R. S. 1923, Secs. 39-301 to 353 and 501 to 511.
30. Const. of Kansas Art. II. Ch. 4.
31. R. S. 1923, Sec. 25-313.
32. R. S. 1923, Sec. 72-201.
33. R. S. 1923, Sec. 19-501.
34. Const. of Kansas, Art. II. Ch. 4.
35. Laws, 1931, Ch. 155.
36. R. S., 1923, Sec. 72-203.
37. R. S. 1923, Sec. 19-1301.
38. R. S. 1923, Sec. 19-1101.
39. R. S. 1923, Sec. 19-801.
40. R. S. 1923, Sec. 19-701.
41. R. S. 1923, Sec. 19-501.
42. R. S. 1923, Sec. 19-301.
43. R. S. 1923, Sec. 19-1001.
44. R. S. 1923, Sec. 19-1201.
45. R. S. 1923, Sec. 25-212.

46. R. S. 1923, Supp. 1931, Sec. 25-225-228.
47. R. S. 1923, Sec. 25-205.
48. R. S. 1923, Sec. 25-206.
49. R. S. 1923, Sec. 25-303, *Supp. 1931*.
50. R. S. 1923, Secs. 19-1203, 303, 504 and 72 to 209.
51. R. S. 1923, Sec. 72-209.
52. R. S. 1923, Secs. 19-804, 1103, and 25 to 312.
53. R. S. 1923, Sec. 19-1306, 715.
54. R. S. 1923, Sec. 25-314.
55. R. S. 1923, Supp. 1931, Secs. 19-401 to 402
56. R. S. 1923, Secs. 19-1401 to 1402
57. R. S. 1923, Supp. 1931, Secs. 65-201 to 204
58. R. S. 1923, Sec. 68-501
59. R. S. 1923, Sec. 68-503
60. R. S. 1923, Supp. 1931, Sec. 19-601
61. R. S. 1923, Sec. 19-716
62. R. S. 1923, Supp. 1931, Secs. 19-246 to 249
63. R. S. 1923, Sec. 80-1404
64. R. S. 1923, Sec. 15-104
65. R. S. 1923, Sec. 80-1404 ; Sec. 15-104
66. R.S. 1923, Sec. 19-217
67. R. S. 1923, Secs. 80-1101 to 1104
68. R. S. 1923, Secs. 80-301 to 307.
69. R. S. 1923, Secs. 80-401 to 411.
70. R. S. 1932, Secs. 80-501 to 504; 601 to 604; 701 to 707.
71. R. S. 1923, Sec. 80-204.
72. R. S. 1923, Sec. 80-203.

73. R. S. 1923, Secs. 80-205;504.
74. R. S. 1923, Sec. 25-1606.
75. R. S. 1923, Sec. 80-302.
76. R. S. 1923, Sec. 80-101.
77. R. S. 1923, Sec. 80-Articles 8, 9, 10, 12, 13, and 14.
78. See Page 135 below.
79. R. S. 1923, Sec. 80-302.
80. A most interesting commentary upon township government is the fact that the law makes any person liable to a fine of twenty-five dollars who refuses to serve when elected to a township office, if he is physically able to serve. No person, however, may be compelled to serve two or more terms successively. R. S. 1923, Sec. 80-1402.

CHAPTER VI

1. State Tax Commission Eleventh Biennial Report, 1927-28, p. 518.
2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid.
6. State Tax Commission First Report, 1908.
7. Ibid.
8. State Tax Commission, First Report, 1908, p. 276. Eleventh Biennial Report, 1927-28, p. 518.
9. R. S. 1923, Sec. 79-1803.
10. R. S. 1923, Sec. 2-603.
11. R. S. 1923, Sec. 2-201.
12. R. S. 1923, Sec. 68-519.
13. R. S. 1923, Secs. 79-1901 to 1911.
14. R. S. 1923, Sec. 68-1102.

15. R. S. 1923, Sec. 19-236.
16. The limitations upon the general county levy alone vary slightly with each million dollars increase in the county valuation. R. S. 1923, Secs. 79-1901 to 1911.
17. See p. 52 above.
18. R. S. 1923, Sec. 19-1411.
19. Ibid.
20. R. S. 1923, Sec. 19-1412.
21. Ibid.
22. R. S. 1923, Sec. 79-711.
23. R. S. 1923, Sec. 79-1404.
24. R. S. Supp. 1931, Sec. 79-402.
25. R. S. 1923, Sec. 79-1411.
26. Ibid.
27. R. S. 1923, Sec. 79-1412.
28. Ibid.
29. R. S. 1923, Sec. 79-309.
30. For example, see Instructions on Assessment and Equalization of Property, 1928.
31. R. S. 1923, Sec. 79-307.
32. R. S. 1923, Secs. 79-1001 to 1007.
33. R. S. 1923, Sec. 79-1415.
34. Ibid.
35. R. S. 1923, Sec. 79-403.
36. R. S. 1923, Sec. 79-1412.
37. R. S. 1923, Sec. 79-1413.
38. R. S. 1923, Secs. 79-401 to 427.
39. See p. 110 below.

40. See Kansas Tax Code Commission Report, 1929, p. 85-93.
41. R. S. 1923, Sec. 79-1601.
42. R. S. 1923, Sec. 79-1602.
43. Ibid.
44. Ibid.
45. Ibid.
46. Ibid.
47. R. S. 1923, Sec. 79-1604.
48. R. S. 1923, Sec. 79-1409.
49. Ibid.
50. Ibid.
51. R. S. 1923, Sec. 79-1410.
52. R. S. 1923, Sec. 79-1701.
53. Ibid.
54. Ibid.
55. Ibid.
56. R. S. 1923, Sec. 79-1702.
57. State Tax Commission First Report, 1908, p. 6.
58. Ibid., p. 7.
59. Report Kansas Tax Code Commission, 1929, p. 88.
60. R. S. 1923, Sec. 79-1803.
61. R. S. 1923, Sec. 79-2001.
62. R. S. 1923, Sec. 79-2004.
63. Ibid.
64. R. S. 1923, Sec. 79-2101, Supp. 1931.
65. Ibid.
66. Ibid.

67. R. S. 1923, Sec. 79-2106.
68. R. S. 1923, Sec. 79-2102.
69. R. S. 1923, Sec. 79-2105.
70. R. S. 1923, Sec. 79-2302.
71. R. S. 1923, Sec. 79-2308.
72. R. S. 1923, Sec. 79-2309.
73. R. S. 1923, Sec. 79-2311.
74. R. S. 1923, Sec. 79-2319.
75. R. S. 1923, Sec. 79-2318.
76. R. S. 1923, Sec. 79-2322.
77. R. S. 1923, Sec. 79-2313.
78. R. S. 1923, Sec. 79-2325-2326.
79. R. S. 1923, Sec. 79-2401-2414.
80. R. S. 1923, Sec. 79-2411.
81. R. S. 1923, Secs. 79-2701 to 2705.
82. R. S. 1923, Sec. 79-2501.
83. R. S. 1923, Sec. 79-2512.
84. R. S. 1923, Sec. 79-2505.
85. R. S. 1923, Sec. 79-2410.
86. R. S. 1923, Sec. 79- 2801 to 2807.
87. R. S. 1923, Sec. 79-3108, Supp. 1931.
88. R. S. 1923, Sec. 79-3109, Supp. 1931.
89. Jensen, J. P. The Kansas Tax on Intangibles,
especially p. 26.
90. R. S. 1923, Secs. 79-3101 to 3107, Suppl. 1931.
91. State Tax Commission, Eleventh Biennial Report,
1927-28, p. 436.
92. Ibid., p. 495.

93. R. S. 1923, Sec. 79-3016, Supp. 1931.
94. R. S. 1923, Sec. 19-2220, Supp. 1931.
95. R. S. 1923, Sec. 32-104.
96. R. S. 1923, Sec. 28-103.
97. R. S. 1923, Sec. 8-145. Supp. 1931.
98. Budget of Douglas County, 1931, in Douglas County Republican, July 23, 1931.
99. Kansas Tax Code Commission Report, 1929, p. 147.
100. R. S. 1923, Sec. 79-3025, Supp. 1931.
101. R. S. 1923, Sec. 68-416, Supp. 1931.
102. Ibid.
103. R. S. 1923, Sec. 2-601.
104. Budget of Douglas County, 1931.
105. R. S. 1923, Sec. 39/232.
106. R. S. 1923, Sec. 19-506.
107. R. S. 1923, Sec. 19-533.
108. R. S. 1923, Sec. 19-507.
109. R. S. 1923, Sec. 19-508.
110. R. S. 1923, Sec. 19-520.
111. R. S. 1923, Sec. 19-525.
112. R. S. 1923, Secs. 19-522 to 528.
113. R. S. 1923, Sec. 19-312.
114. C. O. Bowman, County Clerk, Douglas County.
115. R. S. 1923, Sec. 19-616.
116. R. S. 1923, Sec. 19-624.
117. Ibid.
118. Ibid.
119. R. S. 1923, Sec. 19-617.
120. R. S. 1923, Sec. 19-505.

121. R. S. 1923, Sec. 19-528.
122. R. S. 1923, Sec. 19-222.
123. R. S. 1923, Sec. 19-221.
124. R. S. 1923, Secs. 19-601 to 627.
125. Ibid.
126. R. S. 1923, Sec. 19-716.
127. R. S. 1923, Sec. 19-228.
128. R. S. 1923, Sec. 19-509.
129. Ibid.
130. Ibid.
131. R. S. 1923, Sec. 19-318.
132. R. S. 1923, Sec. 19-511.
133. R. S. 1923, Sec. 19-311.
134. R. S. 1923, Sec. 19-320.
135. R. S. 1923, Sec. 19-514.
136. R. S. 1923, Sec. 19-226.
137. R. S. 1923, Secs. 19-227 to 228.
138. R. S. 1923, Sec. 19-317.
139. R. S. 1923, Secs. 19-212-213.
140. For example, see: R. S. 1923, Sec. 19-1510.
141. Census Bureau; Wealth, Public Debt and Taxation, 1922, Public Debt, p. 12.

CHAPTER VII

1. State Highway Commission, Report, 1928-30, p. 188, 1928-30.
2. State Tax Commission, Twelfth Biennial Report, 1929-30, p. 406.
3. State Highway Commission, Report, 1928-30, p. 188.

4. Ibid., p. 20
5. Laws, 1929, Ch. 225.
6. R. S. 1923, Supp. 1931, Secs. 74-2001 to 2006
7. R. S. 1923, Supp. 1931, Sec. 68-406.
8. State Highway Commission, Report, 1928-30, p. 13.
9. Loc. cit.
10. Ibid., p. 206.
11. R. S. 1923, Supp. 1931, Sec. 68-416; See p. 113 above.
12. Ibid.
13. R. S. 1923, Supp. 1931, Sec. 68-418.
14. R. S. 1923, Sec. 68-501-506.
15. R. S. 1923, Sec. 28-119.
16. R. S. 1923, Supp. 1931, Sec. 68-406.
18. R. S. 1923, Supp. 1931, Secs. 68-506a to 506e.
17. R. S. 1923, Supp. 1931, Sec. 68-506.
19. R. S. 1923, Supp. 1931, Secs. 68-508 to 515.
20. R. S. 1923, Sec. 68-519.
21. R. S. 1923, Sec. 68-520.
22. R. S. 1923, Sec. 68/521
23. R. S. 1923, Sec. 68-522
24. R. S. 1923, Supp. 1931, Secs. 68-523 to 530.
25. R. S. 1923, Sec. 68-531.
26. R. S. 1923, Supp. 1931, Sec. 68-533.
27. R. S. 1923, Sec. 68-535.
28. R. S. 1923, Sec. 68-201.
29. R. S. 1923, Secs. 68-538 to 541.

30. R. S. 1923, Sec. 68-542.
31. R. S. 1923, Sec. 68-509.
33. R. S. 1923, Secs. 68-901 to 908.
32. R. S. 1923, Sec. 68-534.
34. R. S. 1923, Supp. 1931, Sec. 68-516.
35. R. S. 1923, Supp. 1931, Secs. 68-102 to 117.
36. R. S. 1923, Supp. 1931, Secs. 118-158.
37. See p. 130 above.
38. R. S. 1923, Supp. 1931, Secs. 68-701 to 733.
39. Ibid.
40. R. S. 1923, Sec. 68-1107.
41. R. S. 1923, Sec. 68-1102.
42. R. S. 1923, Sec. 68-1108.
43. R. S. 1923, Sec. 58-1111.
44. R. S. 1923, Sec. 58-1116.
46. R. S. 1923, Supp. 1931, Sec. 68-1104.
45. R. S. 1923, Secs 68-1103, 1106.
47. R. S. 1923, Sec. 68-1122.
48. R. S. 1923, Sec. 68-1123.
49. R. S. 1923, Sec 1501-1506.
50. State Highway Commission, Report, 1928-30, p. 188.
51. Ibid, p. 175-188.
52. State Tax Commission, Twelfth Biennial Report, 1929-30, p. 404.
53. Bureau of Census, Crainage in Kansas, 1930, Table 8, p. 5.
54. Bureau of Census, Drainage in Missouri, 1930. Table 8, p. 6.
55. Bureau of Census, Drainage in Kansas, 1930, Map, p. 2.

56. Ibid., County table II, p. 8.
57. Ibid., State Tables I,III, p. 4-5.
58. Ibid., State Table III, p. 5.
59. R. S. 1923, Secs. 24-201 to 216.
60. R. S. 1923, Supp. 1931, Art. 24.
61. R. S. 1923, Secs. 24-301 to 317.
62. R. S. 1923, Sec. 24-402
63. R. S. 1923, Sec. 24-205
64. R. S. 1923, Secs. 24-108 to 110.
65. R. S. 1923, Supp. 1931, Secs. 24-401 to 487 ; 501 to 529.
66. R. S. 1923, Supp. 1931, Secs. 24-601 to 653; 701 to 715.
67. Board of Agriculture, Drainage and Levee Districts of Kansas. (Mimeo.)
68. R. S. 1923, Supp. 1931, Secs. 24-1001 to 1073.
69. Board of Agriculture, Drainage and Levee Districts of Kansas. (Mimeo.)
70. R. S. 1923, Secs. 24-801 to 819.
71. R. S. 1923, Secs. 24-401 to 480.
72. Board of Agriculture, Drainage and Levee Districts of Kansas. (Mimeo.)
73. R. S. 1923, Secs. 19-1501 to 1543; All except a very few of these forty-three paragraphs are so phrased as to be of very limited application, special laws, in fact. The variety in these laws leads one to believe that a customary preliminary to any important county building, say, to the construction of a court house, is a campaign in the legislature leading to the passage of a special enabling act.

CHAPTER VIII

1. R. S. 1923, Sec. 39-304

2. R. S. 1923, Sec. 3-340.
3. R. S. 1923, Supp. 1931, Secs. 39-340 to 340b.
4. Clark, Stevens and Gray counties. Wabaunsee county reported a poor fund, but showed no special rate levied.
5. These figures and much of the other material in this chapter relating to the actual practice of public welfare administration are taken from two unpublished papers which were presented before the Kansas and Missouri Conference on Social Work, in Kansas City, Missouri in 1932. Clark, Carroll D., Poor Relief Work in Kansas. Clark, Mrs. Carroll D., Mother's Aid Pensions in Kansas.
6. R. S. 1923, Secs. 29-301 to 323.
7. R. S. 1923, Supp. 1931, Secs. 39-501 to 511.
8. Clark and Clark, Material cited.
9. R. S. 1923, Sec. 39-319.
10. R. S. 1923, Supp. 1931, Secs. 39-501, 509.
11. R. S. 1923, Supp. 1931, Secs. 39-324 to 358.
12. R. S. 1923, Secs. 39-503 to 506.
13. State Board of Administration, Statistics Relating to Poorhouses, etc. 1928-1929, p. 21.
14. R. S. 1923, Secs. 39-601 to 603.
15. Clark and Clark, material cited.
16. R. S. 1923, Sec. 39-601.
17. R. S. 1923, Secs. 19-244-245.
18. See p. 188-189 below.
19. R. S. 1923, Sec. 38-407.
20. R. S. 1923, Secs. 38-501-504.
21. R. S. 1923, Secs. 38-505-510.
22. R. S. 1923, Secs. 38-511-514.
23. Clark and Clark, material cited.

24. Laws, 1885, Ch. 129.
25. R. S. 1923, Supp. 1931, Secs. 65-201 to 204
26. Clark and Clark, Material cited.
27. R. S. 1923, Supp. 1931, Sec. 65-204.
28. R. S. 1923, Secs. 39-401 to 413.
29. R. S. 1923, Sec. 65-203.
30. R. S. 1923, Supp. 1931, Secs. 74-3401 to 3406.
31. R. S. 1923, Secs. 76-1713 to 1715.
32. R. S. 1923, Supp. 1931, Secs. 65-5a01 to 5a07.
33. R. S. 1923, Supp. 1931, Secs. 19-1801 to 1828.
34. R. S. 1923, Supp. 1931, Sec. 19-1826.
35. R. S. 1923, Supp. 1931, Sec. 19-1828.
36. R. S. 1923, Supp. 1931, Secs. 19-1821 to 1826.
37. R. S. 1923, Secs. 19-2101 to 2105.
38. R. S. 1923, Secs. 76-1510 to 1512.
39. R. S. 1923, Supp. 1931, Secs. 76-1611 to 1612.
40. See p. 189 to 190 below.
41. R. S. 1923, Secs. 76-1217 to 1219.
42. State Board of Administration, Statistics, 1928-29, p. 22.
43. R. S. 1923, Sec. 76-1218.
44. R. S. 1923, Sec. 39-103.
45. R. S. 1923, Sec. 39-108.
46. R. S. 1923, Sec. 39-101.
47. R. S. 1923, Sec. 39 -102.
48. Ibid.

CHAPTER IX

1. Except, of course, the district judge.
2. R. S. 1923, Secs. 21-952 to 956.
3. An example of this may be seen in the town of Tipton, Mitchell county.
4. Const., Art. 3, Sec. 4.
5. Ibid.
6. Const., Art. 3, Sec. 14.
7. Laws, 1931, p. 7 to 11.
8. Const., Art. 3, Sec. 13.
9. R. S. 1923, Sec. 75-3120.
10. Const., Art. 3, Sec. 15.
11. R. S. 1923, Sec. 25-312 ; Const., Art. 3, Sec. 11.
12. R. S. 1923, Secs. 20-305-to 311.
13. Const., Art. 3, Sec. 10.
14. R. S. 1923, Sec. 20-201.
15. R. S. 1923, Secs. 19-223 to 224.
16. See p. 79 above.
17. Const., Art. 3, Sec. 7.
18. R. S. 1923, Secs. 19-1301 to 1310.
19. R. S. 1923, Supp. Secs. 19-1308 to 1309a.
20. R. S. 1923, Supp. 1931, Sec. 28-117.
21. R. S. 1923, Supp. 1931, Sec. 28-306d.
22. R. S. 1923, Supp. 1931, Sec. 28-117.
23. R. S. 1923, Supp. 1931, Sec. 28-306d.
24. R. S. 1923, Supp. 1931, Sec. 20-312.
25. R. S. 1923, Secs. 20-901 to 911; R. S. 1923, Supp. 1931, Sec. 20-904.
26. Const., Art. 3, Sec. 8.

27. Ibid. ; R. S. 1923, Sec. 20-1101 .
28. R. S. 1923, Sec. 20-1103.
29. R. S. 1923, Supp. 1931, Sec. 28-113.
30. R. S. 1923, Suppl. 1931, Sec. 28-308a.
31. R. S. 1923, Supp. 1931, Secs. 28-113, 308a.
32. R. S. 1923, Secs. 20-801 to 819.
33. R. S. 1923, Sec. 20-804.
34. Laws, 1905, Ch. 190.
35. R. S. 1923, Secs. 38-401 to 429.
36. R. S. 1923, Sec. 38-403.
37. R. S. 1923, Sec. 38-416.
38. R. S. 1923, Sec. 38-429.
39. R. S. 1923, Secs. 39-201 to 239.
40. See p. 30 above.
41. R. S. 1923, Sec. 23-106.
42. R. S. 1923, Sec. 25-1413.
43. Const., Art. 3, Sec. 9.
44. R. S. 1923, Sec. 61-102.
45. R. S. 1923, Sec. 63-101.
46. R. S. 1923, Secs. 28-127, 136.
47. R. S. 1923, Supp. 1931, Sec. 20-2102.
48. See Articles 14 to 21 of Ch. 20 , R. S. 1923, and Supp. 1931.
49. R. S. 1923, Secs. 20-1301 to 1312.
50. In 1864 the legislature revived the county attorney which had been replaced by the district attorney in 1861. In the same act the information of the county attorney was substituted for the indictment of the grand jury. Laws, 1864.
51. Ibid.; R. S. 1923, Secs. 62-801 to 808.

52. This fact coupled with the discretion of the county attorney in the matter of filing charges has led to extreme caution on the part of some county attorneys in filing charges. In order to maintain a high percentage of convictions from among the cases tried, some county attorneys have at least been accused of refusing to prosecute any except the clearcut cases almost sure of a conviction.
53. See p. 120 above.
54. R. S. 1923, Supp. 1931, Secs. 28-105 to 105d.
55. R. S. 1923, Supp. 1931, Secs. 19-709 to 709a.
56. R. S. 1923, Supp. 1931, Secs. 19-246 to 249.
57. R. S. 1923, Supp. 1931, Secs. 28-105 to 105d.
58. R. S. 1923, Supp. 1931, Secs. 28-305 to 305d.
59. R. S. 1923, Sec. 28-105.
60. R. S. 1923, Sec. 21-2124.
61. R. S. 1923, Sec. 19-705.
62. R. S. 1923, Sec. 19-803.
63. R. S. 1923, Sec. 19-805.
64. R. S. 1923, Supp. 1931, Secs. 19-806 to 807a.
65. R. S. 1923, Sec. 19-812.
66. R. S. 1923, Sec. 19-816.
67. R. S. 1923, Secs. 28-106 to 109.
68. R. S. 1923, Sec. 19-1910.
69. R. S. 1923, Supp. 1931, Sec. 28-106a.
70. R. S. 1923, Sec. 28-307.
71. R. S. 1923, Secs. 19-1901 to 1925.
72. R. S. 1923, Supp. 1931, Secs-901 to 904.
73. R. S. 1923, Secs. 19-2001-2010.
74. R. S. 1923, Supp, 1931, Secs. 19-1001 to 1022.
75. R. S. 1923, Sec. 19-1015.

76. R. S. 1923, Supp. 1931, Sec. 19-1018.
77. R. S. 1923, Sec. 19-1016.
78. R. S. 1923, Sec. 19-1002.
79. R. S. 1923, Sec. 28-111.
80. R. S. 1923, Sec. 28-112.
81. R. S. 1923, Sec. 28-310.
82. R. S. 1923, Sec. 28-310a.
83. R. S. 1923, Secs. 20-302; 62-1304.
84. R. S. 1923, Secs. 43-101 to 134. Supp. 1931.
85. R. S. 1923, Secs. 43-135 to 147.
86. R. S. 1923, Secs. 43-148 to 150.
87. R. S. 1923, Sec. 28-122.
88. R. S. 1923, Supp. 1931, Sec. 28-122a.

CHAPTER X

1. R. S. 1923, Secs. 72-201 to 220.
2. R. S. 1923, Sec. 72-205.
3. R. S. 1923, Secs. 72-1401 to 1408.
4. R. S. 1923, Secs. 72-1317 to 1325.
5. R. S. 1923, Supp. 1931, Secs. 72-301 to 317.
6. R. S. 1923, Sec. 72-2304.
7. R. S. 1923, Sec. 72-2401.
8. R. S. 1923, Supp. 1931, Secs. 72-3001 to 3022.
9. R. S. 1923, Supp. 1931, Secs 72-2501 to 2517.
10. R. S. 1923, Sec. 28-116.
11. Ibid.
13. R. S. 1923, Supp. 1931, Sec. 28-304b.
12. R. S. 1923, Sec. 28-304.

14. R. S. 1923, Secs 19-1701 to 1712.
15. American Library Directory, Table of Public Libraries.
16. See p. 184 above.
17. R. S. 1923, Supp. 1931, Secs. 19-2226 to 2229.
18. R. S. 1923, Secs. 19-1201 to 1215.
19. See p. 110 above.
20. R. S. 1923, Sec. 28- 114.
21. R. S. 1923, Supp. 1931. Sec. 28-114a.
22. R. S. 1923, Supp. 1931. Sec. 28-309c.
23. R. S. 1923, Secs. 19-1401-1433.
24. R, S. 1923, Sec. 28-311.
25. R. S. 1923, Secs. 2-125 to 157. Supp. 1931.
26. R. S. 1923, Secs. 2-601 to 607.
27. R. S. 1923, Secs. 2-1301 to 1310.
28. R. S. 1923, Supp. 1931, Sec. 2-1311 to 1313.
29. R. S. 1923, Supp. 1931, Secs. 19-2401, 2403, 2404,
2407, 2408.
30. R. S. Supp. 1931, Secs. 19-2311 to 2315.
31. R. S. 1923, Secs 42-501-506.
32. R. S. 1923, Secs 42-505 to 507; Sec. 70-1920.
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